DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[REG–105128–23]

RIN 1545–BQ72

Rules Regarding Dual Consolidated Losses and the Treatment of Certain Disregarded Payments

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that address certain issues arising under the dual consolidated loss rules, including the effect of intercompany transactions and items arising from stock ownership in calculating a dual consolidated loss. The proposed regulations also address the application of the dual consolidated loss rules to certain foreign taxes that are intended to ensure that multinational enterprises pay a minimum level of tax, including exceptions to the application of the dual consolidated loss rules with respect to such foreign taxes. Finally, the proposed regulations include rules regarding certain disregarded payments that give rise to losses for foreign tax purposes.

DATES: Written or electronic comments and requests for a public hearing must be received by October 7, 2024.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically via the Federal eRulemaking Portal at *https://www.regulations* (indicate IRS and REG–105128–23) by following the online instructions for submitting comments. Requests for a public hearing must be submitted as prescribed in the ''Comments and Requests for a Public Hearing'' section. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comments submitted to the IRS's public docket. Send paper submissions to: CC:PA:01:PR (REG–105128–23), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations generally, Andrew L. Wigmore at (202) 317–5443; concerning the proposed regulations regarding intercompany transactions, Julie Wang at (202) 317–6975; concerning submissions of comments or requests for a public hearing, Publications and Regulations Section at (202) 317–6901 (not toll-free numbers) or by email at *publichearings@irs.gov* (preferred).

SUPPLEMENTARY INFORMATION:

Background

I. The Dual Consolidated Loss Rules

A. In General

Section 1503(d) was enacted in response to concerns that taxpayers were isolating expenses in dual resident corporations to enable two profitable companies, subject to tax in two different jurisdictions, to use the dual resident corporation's losses. *See* S. Rep. No. 99–313, 99th Cong., 2nd Sess., at 419–421 (1986). Section 1503(d) and the regulations thereunder are intended to prevent this result and to neutralize other types of ''double-deduction outcomes,'' that is, where the same economic loss could be used to offset or reduce both income subject to U.S. tax (but not a foreign jurisdiction's tax) and income subject to the foreign jurisdiction's tax (but not U.S. tax). *See id.* and TD 9315 (72 FR 12902).

Section 1503(d)(1) generally provides that a dual consolidated loss of a domestic corporation cannot reduce the taxable income of a domestic affiliate (a ''domestic use''). *See also* §§ 1.1503(d)–2 and 1.1503(d)–4(b). Except as provided in regulations under section 1503(d)(2)(B), section 1503(d)(2)(A) defines a dual consolidated loss as any net operating loss of a domestic corporation which is subject to an income tax of a foreign country without regard to whether such income is from sources in or outside of such foreign country, or is subject to such a tax on a residence basis. Section 1503(d)(3) provides regulatory authority to treat any loss of a separate unit of a domestic corporation as a dual consolidated loss.[1] Accordingly, § 1.1503(d)–1(b)(5) defines a dual consolidated loss as a net operating loss of a dual resident corporation or the net loss of a domestic corporation attributable to a separate unit.

A dual resident corporation is generally defined as a domestic corporation that is subject to an income tax of a foreign country on its worldwide income or on a residence basis. *See* § 1.1503(d)–1(b)(2)(i). A separate unit is generally defined as either a foreign branch (defined in § 1.1503(d)–1(b)) or an interest in a hybrid entity[2] that is carried on or owned, as applicable, directly or indirectly, by a domestic corporation (a ''domestic owner'' of the separate unit). *See* § 1.1503(d)–1(b)(4)(i). An affiliated dual resident corporation and an affiliated domestic owner are defined as a dual resident corporation and a domestic owner, respectively, that is a member of a consolidated group. *See* § 1.1503(d)–1(b)(10).

Pursuant to section 1503(d)(2)(B), the dual consolidated loss regulations provide certain exceptions to the general prohibition against the domestic use of a dual consolidated loss. For example, the domestic use limitation does not apply if, pursuant to a ''domestic use election,'' the taxpayer certifies that there has not been and will not be a ''foreign use'' of the dual consolidated loss during a certification period.[3] *See* § 1.1503(d)–6(d). If a foreign use or other triggering event occurs during the certification period, the dual consolidated loss must be recaptured, and an interest charge is imposed on the recaptured amount. *See* § 1.1503(d)–6(e)(1). In general, a foreign use occurs when any portion of the dual consolidated loss is made available under the income tax laws of a foreign country to offset or reduce, directly or indirectly, the income of a foreign corporation or the direct or indirect owner of a hybrid entity that is not a separate unit. *See* § 1.1503(d)–3(a)(1). Other triggering events include certain transfers of the interests in or assets of a separate unit, as well as the failure to satisfy various certification requirements. *See* § 1.1503(d)–6(e).

B. Computing Income or Dual Consolidated Loss

In general, the income or dual consolidated loss of a dual resident corporation for a taxable year is computed based on the dual resident corporation's items of income, gain, deduction, and loss for the taxable year. *See* § 1.1503(d)–5(b)(1). Similarly, the income or dual consolidated loss of a separate unit is generally computed as if the separate unit were a domestic corporation and based solely on the items of income, gain, deduction, and

[1] Although the term ''separate unit'' is not defined in the statute, the legislative history to section 1503(d)(3) provides one example: a foreign branch the losses of which are, under foreign law, able to offset income of an affiliated foreign corporation. *See* H.R. Rep. No. 100–795, 100th Cong., 2d Sess., at 292–93 (1988).

[2] Hybrid entity means an entity that is not taxable as an association for U.S. 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. § 1.1503(d)–1(b)(3).

[3] Section 1.1503(d)–6(b) (involving certain elective agreements between the United States and a foreign country) and § 1.1503(d)–6(c) (if it can be demonstrated that there is no possibility of a foreign use) also provide exceptions to the prohibition on domestic use.

loss of the domestic owner of the separate unit that are attributable to the separate unit. *See* § 1.1503(d)–5(c)(1). If the dual resident corporation or domestic owner is a member of a consolidated group, then the computations are made in accordance with rules under section 1502 regarding the computation of consolidated taxable income. *See* § 1.1503(d)–5(b)(1) and (c)(1).

The income or dual consolidated loss of a dual resident corporation or separate unit does not, however, include items attributable to an interest in a ''transparent entity.'' *See* § 1.1503(d)–5(b)(2)(iii), (c)(1)(i) and (iii). A transparent entity is an entity that (i) is not taxable as an association for U.S. tax purposes, (ii) is not subject to income tax in a foreign country as a corporation either on its worldwide income or on a residence basis, and (iii) is not a pass-through entity under the laws of the foreign country under which the relevant separate unit or dual resident corporation is subject to tax. *See* § 1.1503(d)–1(b)(16)(i). A domestic limited liability company that, for U.S. tax purposes, is either disregarded as an entity separate from its owner or classified as a partnership is an example of a business entity that may be a transparent entity if the foreign jurisdiction does not view it as a pass-through entity. Because it is unlikely that items attributable to an interest in a transparent entity are taken into account by the jurisdiction in which the dual resident corporation or separate unit is subject to tax, such items should not affect the calculation or use of a dual consolidated loss. *See* TD 9315 (72 FR 12902, 12904–05).

For purposes of attributing items to a separate unit, only items of the domestic owner of the separate unit that are regarded for U.S. tax purposes are taken into account. *See* § 1.1503(d)–5(c)(1)(ii). Thus, items related to disregarded transactions—irrespective of whether such items are regarded and taken into account for foreign tax or accounting purposes—are not taken into account for purposes of determining the amount of income or dual consolidated loss of the separate unit. *See id.; see also* §§ 1.1503(d)–7(c)(6)(iii), 1.1503(d)–7(c)(23), and 1.1503(d)–7(c)(24) for examples illustrating this treatment for various types of disregarded payments.

In the case of a foreign branch separate unit (as defined in § 1.1503(d)–1(b)(4)(i)(A)), items of the domestic owner generally are attributable to the separate unit based on rules under section 864 and § 1.882–5 (by treating the domestic owner as a foreign corporation and the foreign branch separate unit as a trade or business within the United States). *See* § 1.1503(d)–5(c)(2).

In the case of a hybrid entity separate unit (as defined in § 1.1503(d)–1(b)(4)(i)(B)), items of a domestic owner generally are attributable to the separate unit to the extent they are reflected on the books and records of the hybrid entity. *See* § 1.1503(d)–5(c)(3)(i). These items reflected on the books and records must, however, be adjusted to conform to U.S. tax principles. *Id.*

Pursuant to a special rule, any amount included in income of a domestic owner arising from the ownership of stock in a foreign corporation through a separate unit (for example, a subpart F inclusion) is attributable to the separate unit if an actual dividend from such foreign corporation would have been so attributed. *See* § 1.1503(d)–5(c)(4)(iv); *see also* § 1.1503(d)–7(c)(24) for an example illustrating the application of § 1.1503(d)–5(c)(4)(iv).

In general, these rules are intended to attribute items existing for U.S. tax purposes to a separate unit to the extent that it is likely that the relevant foreign country would take into account the item (assuming the item is recognized) for tax purposes, with such approach serving as a proxy for determining whether a double-deduction outcome could result. *See* TD 9315 (72 FR 12902, 12908).

C. Made Available Standard and All or Nothing Principle

A foreign use may occur if any portion of a dual consolidated loss is made available to offset income, even if there are no items of income to actually offset in that taxable year. *See* § 1.1503(d)–3(b). This ''made available'' standard was adopted because of the administrative complexity that would result from having a foreign use occur only when the dual consolidated loss actually offsets income. *See* REG–102144–04 (70 FR 29868, 29872–73). For example, if a portion of a dual consolidated loss is made available to be used by another person, and that person already has a loss before accounting for the dual consolidated loss, then a portion of the dual consolidated loss could become part of a loss carryover, which could be available to be carried forward or carried back to offset income in different taxable years. Departing from the made available standard would require that the portion of the loss carryforward or carryback that was taken into account in computing the dual consolidated loss be identified and tracked, which would require detailed ordering rules for determining when such losses were used and an understanding of the timing and base differences between the United States and the foreign jurisdiction. *See id.*

In general, any amount of the dual consolidated loss being put to a foreign use would cause the entire amount of the dual consolidated loss to be recaptured and reported as income. *See* § 1.1503(d)–6(e)(1). This ''all or nothing'' principle was adopted because, like the made available standard, departing from it would have led to significant administrative complexity and the need for detailed ordering rules. *See* TD 9315 (72 FR 12902, 12910–11). For example, to depart from this standard and determine the amount of recapture on actual foreign use, taxpayers and the IRS would need to undertake a complex analysis of foreign law and distinguish a permanent (or base) difference from a timing difference, to ensure that the portion of the dual consolidated loss that is not recaptured will not be available for a foreign use at some point in the future. *See id.*

D. Mirror Legislation Rule

A foreign use of a dual consolidated loss may also be deemed to occur pursuant to the ''mirror legislation'' rule if the foreign income tax laws would deny any opportunity for the foreign use of the dual consolidated loss in the year in which the dual consolidated loss is incurred (assuming the foreign country recognized the loss in the same year), provided that the foreign use of the loss is denied under such laws for any of the following reasons: (i) the dual resident corporation or separate unit that incurred the loss is subject to income taxation by another country (for example, the United States) on its worldwide income or on a residence basis; (ii) the loss may be available to offset income (other than income of the dual resident corporation or separate unit) under the laws of another country (for example, the United States); or (iii) the deductibility of any portion of a deduction or loss taken into account in computing the dual consolidated loss depends on whether such amount is deductible under the laws of another country (for example, the United States). *See* § 1.1503(d)–3(e). Thus, in order for the rule to apply, two requirements must be satisfied: the income tax laws of the foreign country must deny any opportunity for a foreign use, and the reason for such denial must be described in one of the three enumerated paragraphs in § 1.1503(d)–3(e)(1). In other words, being described in one of the three enumerated paragraphs alone does not cause a foreign law to be treated as mirror

legislation (if, for example, the dual consolidated loss could nevertheless be put to a foreign use).

The mirror legislation rule is intended to prevent foreign jurisdictions from enacting legislation that gives taxpayers no choice but to use a dual consolidated loss to offset an affiliate's income in the United States. *See* REG–102144–04 (70 FR 29868, 29873–74). A lack of choice is contrary to the approach in the dual consolidated loss rules providing taxpayers the option of putting a dual consolidated loss to either a domestic use or a foreign use (but not both). *See id.*

E. Foreign Income Tax

Section 1503(d)(2)(A) defines a dual consolidated loss as any net operating loss of a domestic corporation which is subject to an income tax of a foreign country on its income without regard to whether such income is from sources in or outside of such foreign country, or is subject to such a tax on a residence basis. The exception to the definition of a dual consolidated loss under section 1503(d)(2)(B) similarly references ''foreign income tax law.'' The legislative history to section 1503(d) references foreign taxes on income without further discussion of the characteristics of a foreign income tax. *See, for example,* S. Rep. No. 99–313, 99th Cong., 2nd Sess., at 419–421 (1986). Similarly, the regulations only reference a foreign income tax when setting forth many dual consolidated loss rules. *See, for example,* §§ 1.1503(d)–(1)(b)(2) (dual resident corporation definition), 1.1503(d)–(1)(b)(3) (hybrid entity definition), 1.1503(d)–(1)(b)(16) (transparent entity definition) and 1.1503(d)–(3)(a)(1) (foreign use definition). Thus, the dual consolidated loss rules neither define the term ''income tax'' nor describe the characteristics that distinguish an income tax from another type of tax.

II. The Intercompany Transaction Regulations and the Matching Rule

The regulations under § 1.1502–13 (the ''intercompany transaction regulations'') provide rules for taking into account items of income, gain, deduction, and loss of consolidated group members from intercompany transactions (as defined in § 1.1502–13(b)(1)(i)). Their purpose is to provide rules to clearly reflect the taxable income (and tax liability) of the group as a whole by preventing intercompany transactions from creating, accelerating, avoiding, or deferring consolidated taxable income (or consolidated tax liability). This is accomplished by treating the selling member (''S'') and the buying member (''B'') as separate entities for some purposes, but as divisions of a single corporation for other purposes. S's income, gain, deduction, or loss arising from an intercompany transaction is an intercompany item, and B's income, gain, deduction, or loss arising from an intercompany transaction, or from property acquired in an intercompany transaction, is the corresponding item. The amount and location of S's intercompany items and B's corresponding items are determined on a separate entity basis (''separate entity treatment''). The timing, character, source, and other attributes of the intercompany items and corresponding items, although initially determined on a separate entity basis, generally are redetermined under the intercompany transaction regulations to produce the effect of transactions between divisions of a single corporation (''single entity treatment'').

One of the principal rules within the intercompany transaction regulations that implements single entity treatment is the matching rule of § 1.1502–13(c). Section 1.1502–13(c)(1) requires the attributes of the intercompany and corresponding items to be redetermined to the extent necessary to achieve the same overall effect as if the members were divisions of a single corporation.

Under the matching rule, although treated as divisions of a single corporation, S and B are treated as engaging in their actual transaction and owning any actual property involved in the transaction (rather than treating the transaction as not occurring). Accordingly, under § 1.1502–13(c), the existence of the intercompany transaction and the intercompany items generally is not disregarded. Although treated in the same manner as divisions of a single corporation, S and B are treated as having any special status that they have under the Code or regulations.

Section 1.1502–13(c)(4) provides rules for allocating and redetermining attributes under the matching rule. To the extent that B's corresponding item matches S's intercompany item in amount, the attributes of B's corresponding item generally will control S's offsetting intercompany item. The symmetry that is ordinarily required under the matching rule by conforming the source, character, and other attributes of one member's items to the other member's items is expressly overridden when either S or B has a ''special status.'' Section 1.1502–13(c)(5) provides that, when the attributes otherwise determined under § 1.1502–13(c)(1)(i) for a member's item are permitted or not permitted under the Code or regulations because of a member's special status, the attributes required by the Code or regulations apply to that member's items, but not to the items of another member. The special status rule lists examples of members with special status, including banks, life insurance companies, and a member carrying forward a loss subject to limitation under the separate return limitation year (''SRLY'') rules.

III. Sections 301.7701–1 Through 301.7701–3—Classification of Business Entities

Sections 301.7701–1 through 301.7701–3 classify a business entity with two or more members as either a corporation or a partnership, and a business entity with a single owner as either a corporation or disregarded as an entity separate from its owner (''disregarded entity''). Certain business entities with a single owner are classified as disregarded entities by default or through an election. *See* § 301.7701–3(a) through (c).

IV. Pillar Two

A. GloBE Model Rules

On December 20, 2021, the OECD/G20 Inclusive Framework on BEPS published model rules (the ''GloBE Model Rules'') [4] to assist in the implementation of a reform to the international tax system. *See* OECD/G20, Tax Challenges Arising from the Digitalisation of the Economy Global Anti-Base Erosion Model Rules (Pillar Two). The GloBE Model Rules create a coordinated system of minimum taxation intended to ensure that certain large Multinational Enterprise Groups (''MNE Groups'') pay a minimum level of tax based on the income, adjusted for certain items, arising in each of the jurisdictions where they operate.[5]

Under the GloBE Model Rules, an in-scope MNE Group must compute the GloBE Income or Loss of each of its Constituent Entities.[6] The computation of GloBE Income or Loss generally begins with the net income or loss of a Constituent Entity determined using the accounting standard used in preparing the Consolidated Financial Statements and without any consolidation

[4] As the context requires, references to the GloBE Model Rules include references to a foreign jurisdiction's legislation implementing the GloBE Model Rules.

[5] Capitalized terms used in this part IV of the Background section and parts I.D of the Explanation of Provisions section of this preamble, but not defined herein, have the meanings ascribed to such terms under the GloBE Model Rules.

[6] Constituent Entities include legal persons (other than a natural person), arrangements that prepare separate financial accounts (such as a partnership or trust), or a Permanent Establishment.

adjustments that would eliminate income or expense attributable to intra-group transactions. To reflect GloBE policy outcomes, this amount is then adjusted for specific items to determine the Constituent Entity's GloBE Income or Loss.[7]

The MNE Group must then calculate its Effective Tax Rate (''ETR'') for each jurisdiction in which it operates. The ETR of a jurisdiction equals (i) the sum of Adjusted Covered Taxes of each Constituent Entity located in the jurisdiction, divided by (ii) the Net GloBE Income of the jurisdiction for the Fiscal Year. The Net GloBE Income of the jurisdiction is determined by aggregating the GloBE Income or Loss of all Constituent Entities of the MNE Group located in the same jurisdiction.[8] This ''jurisdictional blending'' is mandatory and is intended to avoid distortions arising from tax consolidation and similar regimes and shifting income and taxes between Constituent Entities located in the same jurisdiction. *See* OECD (2024), Tax Challenges Arising from the Digitalisation of the Economy—Consolidated Commentary to the Global Anti-Base Erosion Model Rules (2023); Inclusive Framework on BEPS, OECD Base Erosion and Profit Shifting Project, April 2024, OECD Publishing, Paris (''GloBE Model Rules Consolidated Commentary''), Article 5.1.1, Paragraph 4. If the ETR in that jurisdiction would be below the 15% Minimum Rate, a top-up tax may be imposed and collected under a Qualified Domestic Minimum Top-up Tax (''QDMTT''), an IIR (the income inclusion rule), or a UTPR (commonly referred to as the undertaxed profits rule) to the extent necessary to ensure that the MNE Group's Excess Profits in the jurisdiction is taxed at the Minimum Rate. Certain countries have enacted, and others have proposed, legislation to implement taxes based on the GloBE Model Rules for fiscal years beginning as early as December 31, 2023.[9]

On December 20, 2022, the OECD/G20 Inclusive Framework on BEPS published the Safe Harbours and Penalty Relief document, which includes guidelines on aspects of the design and operation of a Transitional CbCR Safe Harbour to the GloBE Model Rules. *See* OECD (2022), Safe Harbours and Penalty Relief: Global Anti-Base Erosion Rules (Pillar Two), December 2022, OECD/G20 Inclusive Framework on BEPS, OECD, Paris.[10] The Transitional CbCR Safe Harbour is designed to ameliorate the compliance burden of undertaking full GloBE calculations during the Transition Period[11] by limiting the circumstances in which an MNE will be required to perform such calculations to a smaller number of higher-risk jurisdictions. An MNE Group uses its Qualified CbC Report and financial accounting data to determine if its operations in a jurisdiction qualify for the Transitional CbCR Safe Harbour and, if such operations qualify, the jurisdiction is effectively excluded from the scope of the GloBE Model Rules. Specifically, under the Transitional CbCR Safe Harbour, the Jurisdictional Top-up Tax in a jurisdiction for a Fiscal Year beginning on or before December 31, 2026[12] is deemed to be zero if (i) the MNE Group reports Total Revenue of less than EUR 10 million and Profit (Loss) before Income Tax of less than EUR 1 million in the jurisdiction on its Qualified CbC Report for the Fiscal Year, (ii) the MNE Group has a Simplified ETR that is equal to or greater than the Transition Rate in the jurisdiction for the Fiscal Year, or (iii) the MNE Group's Profit (Loss) before Income Tax in such jurisdiction is equal to or less than the Substance-based Income Exclusion amount, for Constituent Entities resident in that jurisdiction under the Qualified CbC Report, as calculated under the GloBE Model Rules. Expenses and losses are relevant in determining whether each of these three tests is satisfied.

B. Notice 2023–80

On December 11, 2023, the Treasury Department and the IRS released Notice 2023–80, which, among other things, described the interaction of the dual consolidated loss rules with the GloBE Model Rules. The notice explains that in certain cases, the aggregation of GloBE Income or Loss of Constituent Entities in the same jurisdiction in calculating the ETR can be viewed as giving rise to double-deduction outcomes that the dual consolidated loss rules were intended to address. Moreover, the notice recognizes that these concerns could exist with respect to a dual consolidated loss incurred in a taxable year ending before the effective date of foreign legislation implementing the GloBE Model Rules, for example, due to certain timing differences. The notice also recognizes that certain features of the GloBE Model Rules may differ from traditional foreign income tax systems. For example, the GloBE Model Rules do not include a mechanism that would permit taxpayers to forgo the aggregation of GloBE Income and GloBE Losses, and in some cases where the ETR in the jurisdiction is or would otherwise be at or above the Minimum Rate, a loss may not reduce the amount of a Jurisdictional Top-up Tax.

The notice announces limited guidance that would be proposed for certain ''legacy DCLs,'' which in general are dual consolidated losses that a taxpayer incurred before the effective date of the GloBE Model Rules.[13] Under that guidance, a foreign use does not occur with respect to a legacy DCL solely because all or a portion of the deductions or losses that comprise the legacy DCL are taken into account under the GloBE Model Rules, subject to an anti-abuse rule. Where a taxpayer uses a fiscal year for tax purposes that ends after 2024, the foreign use exception is conditioned on the relevant MNE Group using the same fiscal year when applying the GloBE Model Rules. This condition ensures that the legacy DCL rule applies only to the extent of book-tax timing differences, and not due to a mismatch between the U.S. taxable year

[7] In addition to adjustments to reflect common differences between the applicable financial accounting standard and the local income tax rules, the computation of a Low-Tax Entity's GloBE Income or Loss excludes any expense attributable to an Intragroup Financing Arrangement that can reasonably be anticipated to increase the expenses of the Low-Tax Entity without resulting in a commensurate increase in the taxable income of the High-Tax Counterparty.

[8] However, a Stateless Constituent Entity (such as a Reverse Hybrid Entity) is treated as a single Constituent Entity located in a separate and unspecified jurisdiction; the GloBE Income or Loss of a Reverse Hybrid Entity is not aggregated with that of any other Constituent Entity.

[9] The UTPR will generally be effective for Fiscal Years beginning on or after December 31, 2024. Under the European Union (EU) Directive requiring the adoption of the GloBE Model Rules, EU Member States will apply the UTPR for years beginning on or after December 31, 2023, but only in limited circumstances. *See* Council Directive 2022/2523, art. 50, 2022 OJ (L 328) 1, 55.

[10] *https://www.oecd.org/tax/beps/safe-harbours-and-penalty-relief-global-anti-base-erosion-rules-pillar-two.pdf.* The Safe Harbours have since been incorporated into the GloBE Model Rules Consolidated Commentary.

[11] The Transition Period covers all of the Fiscal Years beginning on or before December 31, 2026, but not including a Fiscal Year that ends after June 30, 2028.

[12] Other than a Fiscal Year that ends after June 30, 2028. The Safe Harbour takes a ''once out, always out'' approach under which, if an MNE Group does not apply the Safe Harbour with respect to a jurisdiction in a Fiscal Year in which it is subject to the GloBE Rules, the MNE Group cannot qualify for the Safe Harbour for that jurisdiction in a subsequent year, except where the MNE Group did not have any Constituent Entities located in the jurisdiction in the previous Fiscal Year.

[13] The notice defines legacy DCLs as dual consolidated losses incurred in (i) taxable years ending on or before December 31, 2023, or (ii) provided the taxpayer's taxable year begins and ends on the same dates as the Fiscal Year of the MNE Group that could take into account as an expense any portion of a deduction or loss comprising such a DCL, taxable years beginning before January 1, 2024, and ending after December 31, 2023.

and fiscal year used under the GloBE Model Rules.

Finally, the notice states that the Treasury Department and the IRS are studying the interaction of the dual consolidated loss rules and the GloBE Model Rules and the notice requests comments on the interaction of the dual consolidated loss rules with the GloBE Model Rules, including Article 3.2.7 (relating to Intragroup Financing Arrangements), which is intended to prevent certain avoidance transactions involving arbitrage. The notice also states that the Treasury Department and the IRS are studying the interaction of the GloBE Model Rules with the anti-hybrid rules under sections 245A(e) and 267A.

C. Administrative Guidance Addressing Hybrid Arbitrage Arrangements

On December 15, 2023, the OECD/G20 Inclusive Framework on BEPS published additional Administrative Guidance on the GloBE Model Rules (''December 2023 Administrative Guidance''). *See* OECD (2023), Tax Challenges Arising from the Digitalisation of the Economy—Administrative Guidance on the Global Anti-Base Erosion Model Rules (Pillar Two), December 2023, OECD/G20 Inclusive Framework on BEPS, OECD, Paris.[14] Among other issues, the December 2023 Administrative Guidance addresses the treatment under the Transitional CbCR Safe Harbour of Hybrid Arbitrage Arrangements entered into after December 15, 2022.

The December 2023 Administrative Guidance involving Hybrid Arbitrage Arrangements is intended, in part, to address avoidance transactions that are designed to exploit differences between tax and financial accounting treatment to allow a Tested Jurisdiction to qualify for the Transitional CbCR Safe Harbour, which would be contrary to the purposes of the GloBE Model Rules. One of the Hybrid Arbitrage Arrangements addressed under the guidance is a ''duplicate loss arrangement.'' A duplicate loss arrangement includes an arrangement that results in an expense or loss being included in the financial statement of a Constituent Entity to the extent that the arrangement also gives rise to a duplicate amount that is deductible for purposes of determining the taxable income of another Constituent Entity in another jurisdiction. An arrangement will not be a duplicate loss arrangement, however, to the extent that the amount of the relevant expense is offset against revenue or income that is included in both (i) the financial statements of the Constituent Entity including the expense or loss in its financial statements; and (ii) the taxable income of the Constituent Entity claiming the deduction for the relevant expense or loss. Under this guidance, a Tested Jurisdiction's Transitional CbCR Safe Harbour calculation is adjusted by excluding any expense or loss arising as a result of a duplicate loss arrangement from the Tested Jurisdiction's profit before tax.

The December 2023 Administrative Guidance states that further guidance will be provided to address Hybrid Arbitrage Arrangements, including those addressed in the December 2023 Administrative Guidance, that may otherwise affect the application of the GloBE Model Rules outside the context of the Transitional CbCR Safe Harbour.

Explanation of Provisions

I. Dual Consolidated Loss Rules

A. Interaction With the Intercompany Transaction Regulations

As discussed in part I.B of the Background section of this preamble, the dual consolidated loss regulations provide that, in the case of an affiliated dual resident corporation or an affiliated domestic owner acting through a separate unit (a ''section 1503(d) member''), the computation of income or dual consolidated loss takes into account rules under section 1502 regarding the computation of consolidated taxable income. No specific guidance is provided as to the interaction of rules under section 1502 and those under section 1503(d).

Comments with respect to proposed regulations addressing certain hybrid arrangements that were published in the **Federal Register** on December 28, 2018 (REG–104352–18, 83 FR 67612) (the ''2018 proposed regulations''), addressed the interaction of the matching rule under § 1.1502–13(c) with the computation of income or dual consolidated loss. The preamble to final regulations published in the **Federal Register** on April 8, 2020 (TD 9896, 85 FR 19830), stated that the Treasury Department and the IRS were studying this issue.

The comments recommended that the Treasury Department and the IRS clarify that the matching rule does not apply to cause regarded items to be redetermined (and thus effectively disregarded) for purposes of the dual consolidated loss rules. The comments stated that such an approach promotes the policies of the dual consolidated loss rules and leads to more accurate computations. In addition, a comment asserted that such an approach is consistent with how taxpayers generally apply the rules, and that for these taxpayers a contrary approach could have a significant and unanticipated effect on existing structures.

However, one of the comments cautioned that, if the dual consolidated loss rules were to apply differently with respect to an item arising from an intercompany transaction and an item arising from a disregarded transaction, then the disparity could produce inappropriate policy outcomes. For example, a taxpayer might structure its internal transactions so that (i) payments by separate units are made pursuant to disregarded transactions, such that the payments would not increase or create a dual consolidated loss, and (ii) payments to separate units are made pursuant to intercompany transactions, such that the payments would reduce or eliminate a dual consolidated loss. The comment described additional rules—including a rule that would require a consolidated group to treat intercompany transactions and disregarded payments consistently for purposes of the dual consolidated loss rules—that might minimize tax planning opportunities arising from any such disparity. These proposed regulations address the concern raised in this comment with the disregarded payment loss rules, as discussed in part II of this Explanation of Provisions.

Another comment raised the possibility that taxpayers may have differing views regarding the interaction of the matching rule with the dual consolidated loss rules under current law. As a result, taxpayers currently may be adopting different treatments of the section 1503(d) member's intercompany (or corresponding) items. Accordingly, the comment recommended clarifying how these rules interact.

The dual consolidated loss rules are intended to take into account an item of a dual resident corporation, or attribute an item of a domestic owner to a separate unit, to the extent that the item is likely taken into account for foreign tax purposes. Because it is unlikely that a foreign jurisdiction would disregard an intercompany transaction (or, more generally, transactions between separate legal entities), it is consistent with the policies of the dual consolidated loss rules to take into account items arising from an intercompany transaction on a separate entity basis, to the extent of the application of section 1503(d). In

[14] *https://www.oecd.org/tax/beps/administrative-guidance-global-anti-base-erosion-rules-pillar-two-december-2023.pdf.* The December 2023 Administrative Guidance has since been incorporated into the GloBE Model Rules Consolidated Commentary.

addition, the failure to take items arising from an intercompany transaction into account in an appropriate manner for the section 1503(d) rules could lead to distortive results—both an under- and over-inclusive application of the dual consolidated loss rules—and could create inappropriate planning opportunities.

Accordingly, and consistent with the approach recommended by the comments, the proposed regulations would amend § 1.1502–13 to clarify the treatment of items that are subject to the section 1503(d) rules and the intercompany transaction regulations. Specifically, the proposed regulations clarify that a section 1503(d) member has special status under § 1.1502–13(c)(5) for purposes of applying the dual consolidated loss rules. This approach is consistent with treating a member with losses from separate return limitation years as having special status under § 1.1502–13(c)(5) for purposes of determining the member's SRLY limitation. *See* § 1.1502–13(c)(7)(ii)(J)(*4*).

As a result, if a section 1503(d) member's intercompany (or corresponding) loss otherwise would be taken into account in the current year, and if the dual consolidated loss rules apply to limit the use of that loss (causing the loss to not be currently deductible), the intercompany transaction regulations would not redetermine that loss as not being subject to the limitation under section 1503(d). Therefore, a section 1503(d) member's intercompany (or corresponding) loss could be limited (and therefore not currently deductible) under the dual consolidated loss rules, even though such an outcome is inconsistent with single entity treatment.

In conjunction with the special status rule for the section 1503(d) member, the proposed regulations also clarify the treatment of the section 1503(d) member's counterparty in an intercompany transaction. Proposed § 1.1502–13(j)(10)(iv) applies § 1.1502–13(c) (the matching rule), or principles of the matching rule as relevant in § 1.1502–13(d) (the acceleration rule), to the counterparty member as if the section 1503(d) member were not subject to the dual consolidated loss rules. This approach is consistent with the special status rule in § 1.1502–13(c)(5), which provides that, even though the Code or regulations require certain treatment of the special status member's items by reason of its special status, that treatment does not affect the attributes of the counterparty member's items under the matching rule.

For example, assume that, in the current year, S (the counterparty member) has interest income, and B (a section 1503(d) member) has an interest deduction on an intercompany loan. Even if B's interest deduction were limited under the domestic use limitation under § 1.1503(d)–4(b) and therefore not currently deductible, S nevertheless would take its interest income into account in the current year under proposed § 1.1502–13(j)(10)(iv). In other words, this rule clarifies that the intercompany transaction regulations would not redetermine the attributes of S's interest income to match the treatment of B's interest deduction in situations where B's deduction is limited due to B's special status as a section 1503(d) member. The Treasury Department and the IRS are of the view that redetermining S's interest income as not currently includible in these situations effectively would give the consolidated group the benefit of B's deduction and would not achieve the appropriate result under dual consolidated loss policy.

These proposed regulations also clarify the order of operation between § 1.1502–13 and the dual consolidated loss rules. The dual consolidated loss rules apply to an item only to the extent that the item is otherwise taken into account in income or loss. Consistent with this general rule, the proposed regulations clarify that (i) the intercompany transaction regulations apply first to determine when an intercompany (or corresponding) item is taken into account, and (ii) such item is then included in the dual consolidated loss computations. Thus, for example, in a year in which an intercompany deduction of S (a section 1503(d) member) is deferred under the intercompany transaction regulations, the deduction would not be included in computing S's income or dual consolidated loss for that year under section 1503(d). Moreover, when S's deduction is taken into account under the matching rule in a later year, that deduction would be included in S's dual consolidated loss computations for that year. *See* proposed § 1.1502–13(j)(15)(xi) for an example illustrating the application of the matching rule.

B. Computing Income or Dual Consolidated Loss

1. Items Arising From Ownership of Stock

As discussed in part I.B of the Background section of this preamble, an item of income, gain, deduction, or loss is generally taken into account for purposes of computing income or dual consolidated loss to the extent it is likely that the relevant foreign country would take into account the item (assuming the item is recognized) for tax purposes. In many cases, gain from the sale or exchange of stock of a corporation, or a dividend from a corporation, is unlikely to be included in income in the foreign country due to, for example, a participation exemption or indirect foreign tax credits. In addition, an inclusion with respect to stock of a foreign corporation (such as under section 951(a)(1)(A) or 951A(a)) is unlikely to be taken into account (and therefore is unlikely to be included in income) in the foreign country; moreover, the difference resulting from these inclusions is likely to be permanent because the related earnings of the foreign corporation are unlikely to be included in income in the foreign country when distributed.

Further, the Treasury Department and the IRS are aware that taxpayers may be affirmatively structuring into these rules to produce inappropriate double-deduction outcomes. For example, in order to eliminate a dual consolidated loss otherwise attributable to an interest in a disregarded entity, a domestic corporation could transfer the stock of a controlled foreign corporation (as defined in section 957(a)) that gives rise to inclusions under section 951A(a) to that disregarded entity, even though the foreign country in which the disregarded entity is subject to tax does not tax income of, or distributions from, the controlled foreign corporation.

In light of the prevalence of participation exemptions (or similar regimes that exempt income with respect to stock), coupled with taxpayers structuring into the rules to reduce or eliminate dual consolidated losses, the Treasury Department and the IRS are of the view that the rules should be revised. The proposed regulations therefore generally provide that items arising from the ownership of stock—such as gain recognized on the sale or exchange of stock, dividends (including by reason of section 1248), inclusions under section 951(a) (including by reason of section 245A(e)(2) or 964(e)(4)) or 951A(a), as well as deductions with respect thereto (including under section 245A(a) or 250(a)(1)(B))—are not taken into account for purposes of computing income or a dual consolidated loss. *See* proposed § 1.1503(d)–5(b)(2)(iv)(A) and (c)(4)(iv)(A). These rules are not limited to items arising from the ownership of stock of a foreign corporation because, for example, a dividend from a domestic corporation may be eligible for a

participation exemption under the laws of the foreign country.

However, these rules do not apply with respect to a dividend (or other inclusion) arising from a separate unit or dual resident corporation's ownership of portfolio stock of a corporation (domestic or foreign), which generally is defined as stock representing less than ten percent of the value of the corporation. *See* proposed § 1.1503(d)–5(b)(2)(iv)(B) and (c)(4)(iv)(B) and (C). In these cases, the items are likely to be included (or the related earnings are likely to be subsequently included when distributed) in income in the foreign country in which the separate unit or dual resident corporation is subject to tax. The proposed regulations are intended to ensure that these items, as offset or reduced by any deductions with respect to the items for U.S. tax purposes, are taken into account for purposes of computing income or a dual consolidated loss.

The Treasury Department and the IRS are of the view that this approach is simpler and more administrable than an alternative approach that would consider the extent to which an item is, or will be, actually taken into account under the tax law of the foreign country in which the separate unit or dual resident corporation is subject to tax and not offset or reduced by an exemption, exclusion, deduction, credit, or other similar relief particular to the item. Further, in most cases a more precise approach would not lead to significantly different results given the likelihood that items of income arising from the ownership of stock will be offset or reduced under the tax laws of the foreign country.

The Treasury Department and the IRS recognize that certain amounts included in the income of a domestic owner arising from the ownership of stock in a foreign corporation (in the case of a separate unit, regardless of whether the stock of the foreign corporation is held through the separate unit) may reflect amounts that have been subject to tax, to some extent, by both the foreign jurisdiction and the United States. For example, where a domestic owner of a separate unit that is taxed as a resident in a particular foreign jurisdiction holds stock of a controlled foreign corporation that is also taxed as a resident in the same foreign jurisdiction, the controlled foreign corporation's income may be taxed, to some extent, under the income tax laws of the foreign jurisdiction and by the United States through inclusions under section 951(a) or 951A(a); this could occur regardless of whether the inclusion itself is taken into account by the same foreign jurisdiction. To the extent such amounts are taxed in the same manner and to the same extent as if they were earned directly by the domestic owner, they could be viewed as representing dual inclusion income (that is, items that are included in income in both the United States and the foreign country and not offset or reduced by certain amounts particular to the item) that could be taken into account when determining the dual consolidated loss attributable to the separate unit.

The proposed regulations do not provide a rule that would permit taxpayers to identify and take into account such amounts as dual inclusion income. Doing so would require complicated rules, and raise related administrability concerns, to isolate the amount of dual inclusion income with respect to a particular foreign jurisdiction (for example, where a controlled foreign corporation owns one or more disregarded entities that are subject to tax in different foreign jurisdictions). Such an approach would also need to take into account rate disparities (for example, as a result of the deduction allowed under section 250(a)(1)(B) with respect to inclusions under section 951A) and other differences that may result between income earned directly by a domestic owner and earned indirectly through a controlled foreign corporation.

2. Adjustments To Conform to U.S. Tax Principles

As discussed in part I.B of the Background section of this preamble, regarded items of a domestic owner generally are attributable to a hybrid entity separate unit to the extent they are reflected on the books and records of the hybrid entity. These items reflected on the books and records must, however, be adjusted to conform to U.S. tax principles. Such adjustments would include, for example, adjustments to reflect differences in the calculation of depreciation for accounting and tax purposes, and adjustments to eliminate items reflected on the books and records that are not deductible for tax purposes (such as a penalty or fine). *See* § 1.1503(d)–7(c)(25) for an example illustrating adjustments to conform to U.S. tax principles.

The Treasury Department and the IRS are aware that certain taxpayers may be taking the position that items that are not reflected on the books and records of a hybrid entity may nevertheless be attributable to the hybrid entity separate unit. Specifically, taxpayers may assert that the adjustments to the books and records necessary to conform to U.S. tax principles can include an item that has not been (and will not be) reflected on the books and records of the hybrid entity. For example, if a hybrid entity provides services to its domestic owner and receives a payment as compensation for those services that is generally disregarded for U.S. tax purposes, a taxpayer may take the position that a portion of the domestic owner's regarded income can be reallocated to the books and records of the hybrid entity (and, thus, taken into account by the hybrid entity separate unit) under, for example, the principles of section 482 or section 864(c).

This position is incorrect under the current regulations and misinterprets the required adjustments under § 1.1503(d)–5(c)(3)(i). Such adjustments account for discrepancies between accounting treatment and U.S. tax treatment; they are not permitted to give effect to disregarded payments that § 1.1503(d)–5(c)(1)(ii) explicitly excludes from the calculation of income or dual consolidated loss. *See* § 1.1503(d)–7(c)(23) for an example illustrating the application of § 1.1503(d)–5(c). Further, this position is contrary to the policy underlying § 1.1503(d)–5(c)(3), which is to take into account only items that are regarded for U.S. tax purposes and also are (or have been or will be) reflected on the books and records of the hybrid entity. Nevertheless, for the avoidance of doubt, the proposed regulations clarify that the adjustments necessary to conform to U.S. tax principles do not permit the attribution to a hybrid entity separate unit, or an interest in a transparent entity, of any item that has not been and will not be reflected on the books and records of the hybrid entity or transparent entity. *See* proposed § 1.1503(d)–5(c)(3)(i); *see also* proposed § 1.1503(d)–7(c)(23)(iii) for an example illustrating the application of § 1.1503(d)–5(c); *but see* §§ 1.1503(d)–5(c)(4)(iii), 1.1503(d)–5(c)(4)(v) and 1.1503(d)–5(c)(4)(vi) (special attribution rules that do not require that an item be reflected on the books and records to be taken into account).

C. Anti-Avoidance Rule

As discussed in sections I.A (interaction with the matching rule), I.B.1 (items arising from ownership of stock), I.B.2 (adjustments to conform to U.S. tax principles), and II.A. (disregarded payment losses) of this Explanation of Provisions, the Treasury Department and the IRS continue to learn of transactions or structures that attempt to obtain a double-deduction outcome while avoiding the application of the dual consolidated loss rules. In

addition, the Treasury Department and the IRS are aware of other avoidance transactions that may facilitate a double-deduction outcome by manipulating the computation of income or a dual consolidated loss with items that are not included in income, or do not give rise to tax, in the foreign country. For example, income-producing assets located within the United States could be transferred to, or otherwise be acquired by, a separate unit that is a tax resident in a jurisdiction that, pursuant to a participation exemption or similar regime (including a regime that grants a foreign tax credit for foreign taxes paid on foreign income), would exempt or otherwise not tax the income derived from those assets. Because such assets are located in the United States, however, taxpayers could assert that they would not give rise to a foreign branch separate unit and, assuming they are not held by a transparent entity, take the position that income derived from those assets would reduce or eliminate a dual consolidated loss (despite not being subject to tax in the foreign jurisdiction).

Even if these particular transactions were also addressed by new rules in these proposed regulations, other avoidance transactions could continue to be developed. Accordingly, and rather than continuing to address these transactions on a case-by-case basis, the proposed regulations include an anti-avoidance rule that, in general, is intended to address additional transactions, or interpretations, that may attempt to avoid the purposes of the dual consolidated loss rules. *See* proposed § 1.1503(d)–1(f); *see also* § 1.1503(d)–7(c)(43) for an example illustrating the application of the anti-avoidance rule to a transfer of assets located in the United States to a separate unit. This anti-avoidance rule also applies with respect to transactions that attempt to avoid the purposes of the disregarded payment loss rules because, as discussed in part II of this Explanation of Provisions, such rules are also intended to address transactions that raise policy concerns similar to those arising under the dual consolidated loss rules. *See* proposed § 1.1503(d)–1(f).

D. GloBE Model Rules

1. General Applicability of Dual Consolidated Loss Rules

As discussed in part IV.B of the Background section of this preamble, Notice 2023–80 requested comments on the interaction of the dual consolidated loss rules with the GloBE Model Rules. In response, comments requested that the dual consolidated loss rules be made inapplicable with respect to a foreign tax based on the GloBE Model Rules. In support of these recommendations, comments asserted that the QDMTT, IIR, and UTPR have unique characteristics that are not present in the income taxes that were in existence when section 1503(d) was enacted. According to some comments, these taxes are not based on the traditional concept of tax residency and thus do not present the possibility for the mismatches in tax residency that the dual consolidated loss rules were intended to address. Comments further noted that the QDMTT, IIR, and UTPR are minimum taxes based on an MNE Group's financial accounting income and, in contrast to typical tax consolidation or group relief regimes, the aggregation of revenue or expense under the GloBE Model Rules is not elective. Finally, comments asserted that the IIR differs from a typical foreign income tax because it is not a tax on an entity's income (including income imputed from a subsidiary) arising in the foreign jurisdiction where the entity is a tax resident. According to these comments, a foreign use cannot occur under the current dual consolidated loss rules as a result of a loss being taken into account under an IIR if the entity incurring the loss is not a tax resident in the foreign jurisdiction imposing the IIR—that is, these comments assert a foreign use can only occur if a dual consolidated loss is made available under the laws of the foreign jurisdiction in which the loss arises.

As indicated in Notice 2023–80, the Treasury Department and the IRS are of the view that the aggregation of items of revenue and expense of Constituent Entities in the same jurisdiction in calculating the ETR can result in double-deduction outcomes that the dual consolidated loss rules were intended to address. First, despite the differences between the GloBE Model Rules and more traditional foreign income tax systems, the GloBE Model Rules can also present a typical example of tax residency arbitrage that the dual consolidated loss rules were intended to address. For example, assume USP, a domestic corporation, owns all the interests in DEx, an entity organized under the laws of Country X that is disregarded as an entity separate from its owner. DEx, in turn, owns all the stock in CFCx, a foreign corporation organized under the laws of Country X. DEx incurs a $100x loss and CFCx generates $100x of income. If Country X does not impose an income tax on Country X entities, then the $100x loss incurred by DEx would not be a dual consolidated loss with respect to USP's interests in DEx. *See* § 1.1503(d)–1(b)(5)(ii), (b)(3), and (b)(4)(i). This is appropriate as the loss could not be used to offset CFCx's income and give rise to a double-deduction outcome because there is no Country X income tax that could be reduced as a result of the offset. If, however, Country X enacted a QDMTT that is an income tax, and absent the application of the dual consolidated loss rules, the $100x loss of DEx could then be available to reduce U.S. tax imposed on USP's income as well as the Country X QDMTT imposed on CFCx's income. The Treasury Department and the IRS are of the view that as a matter of the policy underlying the dual consolidated loss rules there is no meaningful distinction between using DEx's $100x loss to offset the Country X QDMTT versus using the loss to instead offset a more traditional income tax imposed by Country X; both cases give rise to a double-deduction outcome. Further, a double-deduction outcome could also occur if the loss were to offset income under another country's IIR, rather than under a QDMTT.

Moreover, the features of the IIR or QDMTT noted by comments—such as using financial accounting income as a starting point for purposes of determining GloBE Income or Loss, or being a minimum tax—do not preclude an IIR or QDMTT from being the type of tax to which the dual consolidated loss rules were intended to apply. Indeed, these types of features are included in the U.S. income tax. *See, for example,* sections 55, 56A, and 59 (corporate alternative minimum tax). The sharing of the loss through the mechanics of calculating Net GloBE Income similarly is an insufficient basis to distinguish the IIR or QDMTT from a more traditional foreign income tax where the loss is shared pursuant to a consolidation election or similar loss-sharing regime.

As an alternative to a foreign use exception, some comments recommended an anti-abuse rule that provides that a foreign use can only occur as a result of aggregation under the GloBE Model Rules if the losses were created for a tax-avoidance purpose. These proposed regulations do not provide such an anti-abuse rule because there is no indication in the statutory language or legislative history that the application of the dual consolidated loss rules should be limited to losses incurred for a tax-

avoidance purpose.[15] Many deductions that can be structured to give rise to a double-deduction outcome are incurred for non-tax business reasons, such as interest expense incurred on external debt that is issued to acquire property or fund business operations.

Accordingly, the proposed regulations provide that an income tax may include a tax that is intended to ensure a minimum level of taxation on income or computes income or loss by reference to financial accounting net income or loss. *See* proposed § 1.1503(d)–1(b)(6)(ii). Therefore, an IIR or QDMTT may be an income tax for purposes of the dual consolidated loss rules and a foreign use may occur under such tax by reason of a loss being used in the calculation of Net GloBE Income or to qualify for a Transitional CbCR Safe Harbour. *See* proposed § 1.1503(d)–7(c)(3)(ii) for an example illustrating the application of the dual consolidated loss rules with respect to a QDMTT. These proposed regulations do not, however, provide specific guidance regarding the UTPR. The Treasury Department and the IRS continue to analyze issues related to the UTPR.

2. Effect on Certain Entities and Foreign Business Operations

As discussed in parts I.A, I.B, and I.E of the Background section of this preamble, the definitions of hybrid entity, hybrid entity separate unit, and dual resident corporation are each based, in part, on whether the relevant entity is subject to an income tax of a foreign country on its worldwide income or on a residence basis. The definition of a foreign branch separate unit, on the other hand, is based on the level of activities required to constitute a foreign branch under § 1.367(a)–6T(g)(1) (subject to an exception where business operations do not constitute a permanent establishment under an applicable income tax convention). Among other requirements, an entity is a transparent entity only if it is not subject to an income tax of a foreign country on its worldwide income or on a residence basis.

As discussed in part IV.A of the Background section of this preamble, a top-up tax may be collected by a jurisdiction with respect to the Net GloBE Income of a Constituent Entity under a QDMTT or an IIR. The top-up tax under an IIR with respect to the Net GloBE Income of an entity located in one jurisdiction may be collected by a different jurisdiction from another Constituent Entity in the MNE Group. As mentioned in part I.D.1 of this Explanation of Provisions, comments have asserted that the IIR is not based on the traditional concept of tax residency and, if a loss does not arise in the foreign jurisdiction that assesses the tax, the dual consolidated loss rules do not apply.

The Treasury Department and the IRS are of the view, that where a loss reduces or eliminates the amount of Net GloBE Income in a jurisdiction, the results under the dual consolidated loss rules should be the same regardless of the jurisdiction collecting tax with respect to the amount of Jurisdictional Top-up Tax. For example, assume a domestic corporation (''DC'') owns a foreign disregarded entity (''FDEx''), a tax resident in Country X that imposes a QDMTT that is an income tax. Further assume that FDEx owns all the stock of a foreign corporation organized under the laws of Country X (''CFCx'') and that is also a tax resident in Country X. FDEx should be treated as subject to the QDMTT, and as a hybrid entity as a result of being subject to the QDMTT, to prevent the double-deduction outcome discussed in part I.D.1 of this Explanation of Provisions.

Alternatively, assume that DC owns another disregarded entity (''FDEy''), that is a tax resident in Country Y, a jurisdiction that imposes an IIR that is income tax, and FDEy owns FDEx, which owns CFCx, and that Country X does not impose a QDMTT. In this case, a loss of FDEx can reduce the GloBE Income of CFCx for purposes of the Country Y IIR and, as was the case with a Country X QDMTT (that is also calculated in part by reference to FDEx's income), a double-deduction outcome may result. The treatment of an interest in FDEx as a separate unit should not be affected if, instead of the QDMTT being collected from FDEx with respect to its GloBE Income, an IIR is collected on FDEy, the owner of FDEx, with respect to the GloBE Income of FDEx. Moreover, a loss of FDEx cannot offset income of a Country Y Constituent Entity for purposes of the Country Y IIR and, therefore, the FDEx separate unit should not be part of a combined separate unit that includes FDEy, which would otherwise distort the calculation of income or loss attributable to the combined Country Y separate unit. In other words, specifically identifying these separate units is necessary to apply the separate unit combination rule, including for purposes of describing the location of separate units arising from a QDMTT or an IIR.

Accordingly, the proposed regulations generally provide that if the income or loss of a foreign entity that is not taxed as an association for Federal income tax purposes is taken into account in determining the amount of tax under an IIR, then a domestic corporation's directly or indirectly held interest in such an entity is a hybrid entity separate unit. *See* proposed § 1.1503(d)–1(b)(4)(i)(B)(*2*). Further, such a hybrid entity separate unit would form part of a combined separate unit based on where the relevant entity is located for purposes of the IIR. *See* proposed § 1.1503(d)–1(b)(4)(ii)(A) and (b)(4)(ii)(B)(*2*). Thus, in both variations of the example in the preceding paragraph, the interest in FDEx would, by reason of the relevant foreign income tax, be treated as a separate unit in Country X, which is the country in which FDEx is located for purposes of the QDMTT and IIR. Further, because a double-deduction outcome may also result from a place of business conducted by a domestic corporation outside the United States that is treated as a Permanent Establishment with respect to a QDMTT or an IIR, the proposed regulations would treat such a place of business as a foreign branch separate unit. *See* proposed § 1.1503(d)–1(b)(4)(i)(A)(*2*).

These new definitions of hybrid entity separate unit and foreign branch separate unit do not apply to an interest in an entity, or place of business, respectively, that would otherwise qualify as a separate unit under the definitions included in the current regulations. This is because a loss attributable to a separate unit as defined under the current regulations is already a dual consolidated loss and, thus, additional rules are not necessary to prevent a double-deduction outcome from occurring as a result of the use of losses attributable to such separate units for purposes of a QDMTT or IIR. For example, if a hybrid entity's loss is also taken into account in determining the amount of tax under an IIR, a foreign use may result if a dual consolidated loss attributable to an interest in the entity is made available to offset income either for purposes of the foreign income tax to which the entity is subject or for purposes of the IIR.

Under the proposed regulations, being subject to an IIR would not cause an interest in a Tax Transparent Entity to be a hybrid entity separate unit. *See* proposed § 1.1503(d)–1(b)(4)(i)(B)(*2*). Although a calculation of GloBE Income or Loss is required for a Tax Transparent Entity, for purposes of an IIR, all of the entity's Financial Accounting Net Income or Loss is allocated to its owners

[15] In contrast, the anti-avoidance rule under proposed § 1.1503(d)–1(f) is intended to backstop the dual consolidated loss rules, which apply to losses without regard to whether incurred for a tax-avoidance purpose.

(or to a permanent establishment of the entity) and, thus, it is unlikely that a loss attributable to an interest in such an entity could give rise to a double-deduction outcome. This treatment is also consistent with the treatment, and policy rationale, under the existing dual consolidated loss rules that an interest in a partnership that is not a hybrid entity is not a separate unit.

The Treasury Department and the IRS are of the view that the treatment of a foreign entity or a place of business outside the United States as a Stateless Constituent Entity should not preclude treating a domestic corporation's interest in such an entity or the place of business as an individual separate unit. Even though the GloBE Income or Loss of a Stateless Constituent Entity is not combined with the GloBE Income or Loss of any other Constituent Entity, treating an interest in such an entity or a place of business as an individual separate unit is appropriate to prevent double-deduction outcomes that may nevertheless arise (for example, if the foreign entity were to generate a loss during the first half of the taxable year and then elect to be treated as a foreign corporation for U.S. tax purposes).

The income or loss of a domestic entity may also be taken into account in determining the amount of tax imposed under an IIR (for example, if a domestic corporation were wholly owned by a foreign corporation organized under the laws of a jurisdiction that imposed an IIR). However, the Treasury Department and the IRS are of the view that the IIR alone should not cause a domestic entity to be treated as a dual resident corporation or a hybrid entity. The dual consolidated loss rules are intended to prevent double-deduction outcomes that can arise from structures involving the possibility of a form of arbitrage, such as from an entity or place of business being subject to tax in more than one country, or from the entity or place of business having different tax classifications under U.S. and foreign tax law. Absent this type of arbitrage, the dual consolidated loss rules would not apply to limit the deductibility of a domestic entity's loss due to that entity's income or loss being reflected in the amount of tax imposed under an IIR (or a similar shareholder-level tax). Moreover, if a loss of a domestic entity were viewed as giving rise to a second deduction because it is taken into account to determine the amount of tax imposed under an IIR, the loss is likely only available to offset dual inclusion income (and therefore would not give rise to a double-deduction outcome) since the income of any domestic affiliate that could be offset by the loss for domestic tax purposes should also be taken into account in determining the amount of tax imposed under the IIR. Accordingly, under the proposed regulations a domestic entity is not treated as a dual resident corporation or a hybrid entity solely as a result of the domestic entity's income or loss being taken into account in determining the amount of an IIR. *See* proposed § 1.1503(d)–7(c)(3)(iii) for an example illustrating the treatment of domestic entities under an IIR. Applying the dual consolidated loss rules only when there is an element of hybridity (or mismatch) is consistent with the scope of both the current dual consolidated loss regulations and the OECD reports addressing hybrid and branch mismatch arrangements.[16]

3. Application to Transitional CbCR Safe Harbour

Comments requested guidance providing that, even if the dual consolidated loss rules apply with respect to the GloBE Model Rules, a foreign use should not occur solely because a dual consolidated loss is taken into account for purposes of the Transitional CbCR Safe Harbour. The comments noted that, unlike the QDMTT, IIR, and UTPR, the Transitional CbCR Safe Harbour is not a collection mechanism and thus does not operate to impose a tax liability. Instead, according to some comments, the Transitional CbCR Safe Harbour can be viewed as a ''gating'' mechanism to determine if a taxpayer is subject to tax, similar to a determination of whether activity rises to the level of a permanent establishment under an applicable tax treaty. Further, comments claimed that the calculation of income and expenses under the Transitional CbCR Safe Harbour is substantially different from such calculations under the general GloBE Model Rules and generally accepted accounting principles.

Because the Transitional CbCR Safe Harbour is intended to serve as a simplified proxy for determining whether the Tested Jurisdiction is likely to have an ETR that is at or above the minimum rate, the Treasury Department and the IRS are of the view that a foreign use exception for the Transitional CbCR Safe Harbour is not appropriate where, in the absence of the Transitional CbCR Safe Harbour, a dual consolidated loss could be made available to reduce the amount of income subject to a Top-up Tax. In other words, the use of a loss or expense to qualify for the Transitional CbCR Safe Harbour, and thereby avoid tax that may otherwise be imposed under the GloBE Model Rules absent the application of the Transitional CbCR Safe Harbour, has the same double-deduction outcome effect as if the loss or expense were made available to directly reduce the tax. As a result, a foreign use may occur with respect to the application of the Transitional CbCR Safe Harbour. *See* proposed § 1.1503(d)–7(c)(3)(ii) for an example illustrating that duplicate loss arrangement rules may prevent such a foreign use.

Finally, one comment requested guidance that jurisdictional blending in a Tested Jurisdiction under the GloBE Model Rules does not constitute a foreign use of a dual consolidated loss if the Transitional CbCR Safe Harbour is satisfied in that Tested Jurisdiction after the application of the duplicate loss arrangement rules. This concern could arise because satisfying the Transitional CbCR Safe Harbour in a Tested Jurisdiction technically does not preclude the application of the GloBE Model Rules (and, thus, technically would not preclude a foreign use that could occur under the ''made available'' standard), but rather only deems the Jurisdictional Top-up Tax in the Tested Jurisdiction to be zero. Consistent with the guidance requested in this comment, the proposed regulations provide a limited foreign use exception under which there is deemed to be no foreign use with respect to the GloBE Model Rules where the Transitional CbCR Safe Harbour is satisfied and no foreign use occurs with respect to the Transitional CbCR Safe Harbour due to the application of the duplicate loss arrangement rules. *See* proposed § 1.1503(d)–3(c)(9). For the avoidance of doubt, however, this foreign use exception does not preclude a foreign use from occurring if the duplicate loss arrangement rules do not apply and a dual consolidated loss is taken into account in determining whether the Transitional CbCR Safe Harbour is satisfied.

4. Mirror Legislation

As discussed in part IV.C. of the Background section of this preamble, the December 2023 Administrative Guidance contains rules that disallow expenses for purposes of qualifying for the Transitional CbCR Safe Harbour if there is a duplicate loss arrangement. An arrangement qualifies as a duplicate loss arrangement, in relevant part, if an

[16] *See, for example,* OECD/G20, Neutralising the Effects of Hybrid Mismatch Arrangements, Action 2: 2015 Final Report (October 2015) (''Hybrid Mismatch Report''), Part I recommendations, paragraph 13 (''While cross-border mismatches arise in other contexts (such as the payment of deductible interest to a tax exempt entity), the only types of mismatches targeted by this report are those that rely on a hybrid element to produce such outcomes.'').

expense or loss in the financial statements of a Constituent Entity also gives rise to a duplicate amount that is deductible in determining the taxable income of another Constituent Entity in another jurisdiction. Comments requested guidance as to whether the duplicate loss arrangement rules in the December 2023 Administrative Guidance constitute mirror legislation (within the meaning of § 1.1503(d)–3(e)(1)).

As discussed in part I.D of the Background section of this preamble, the taxpayer's ability to choose the jurisdiction in which a dual consolidated loss is used is a long-standing feature of the dual consolidated loss rules. The mirror legislation rule was issued to address situations where foreign legislation undermines the taxpayer's ability to choose by denying any opportunity for a foreign use of a particular dual consolidated loss and thereby compelling the taxpayer to make a domestic use election. However, not all forms of foreign law that deny the foreign use of deductions composing a dual consolidated loss are mirror legislation. *See* § 1.1503(d)–7(c)(18)(iii) for an example illustrating that a foreign law similar to the dual consolidated loss rules is not mirror legislation because it permits the loss to be used in that jurisdiction if the loss is not used in another jurisdiction.

The Treasury Department and the IRS are of the view that a taxpayer's ability to choose whether to put a dual consolidated loss to a domestic use or a foreign use can be preserved even if the foreign law does not explicitly provide an election to use the loss (like the dual consolidated loss rules) and instead only denies a loss to avoid a double-deduction outcome. The duplicate loss arrangement rules in the December 2023 Administrative Guidance preserve such a choice and thus do not constitute mirror legislation because a dual consolidated loss could be put to a foreign use for purposes of the Transitional CbCR Safe Harbour. That is, if no domestic use election is made with respect to a dual consolidated loss, then the loss is subject to the domestic use limitation, and the duplicate loss arrangement rules should not apply because the loss would not be deductible for purposes of determining the taxable income of another Constituent Entity in another jurisdiction. If, on the other hand, a domestic use election is made for a dual consolidated loss, then the loss would be put to a domestic use and the duplicate loss arrangement rules should prevent the expense or loss from being taken into account for purposes of the Transitional CbCR Safe Harbour (that is, they should prevent a foreign use). Thus, through its ability to make or forgo a domestic use election, a taxpayer retains the choice to put a dual consolidated loss to a domestic use or a foreign use (but not both). For the same reason, the double-deduction rules included in the OECD report addressing hybrid and branch mismatch arrangements,[17] which similarly deny the foreign use of a dual consolidated loss to the extent it is deductible in another jurisdiction, do not constitute mirror legislation.[18] Accordingly, the proposed regulations clarify that foreign law that preserves a taxpayer's choice to put a dual consolidated loss to a domestic use or a foreign use (but not both) does not constitute mirror legislation, even if there are specific instances where the foreign law denies the foreign use of a deduction or expense to the extent necessary to prevent a double-deduction outcome. *See* proposed § 1.1503(d)–7(c)(18)(iv) for an example illustrating a foreign law that provides such a choice.

5. Transition Rules

As discussed in part IV.B of the Background section of this preamble, Notice 2023–80 announced that future regulations would be promulgated concerning legacy DCLs (that is, certain dual consolidated losses incurred before any legislation enacting the GloBE Model Rules is effective).

Several comments requested that the foreign use exception described in Notice 2023–80 be extended to include dual consolidated losses incurred in taxable years beginning after December 31, 2023 (for example, for taxable years ending on or before December 31, 2024, or taxable years beginning in the year that final regulations concerning the applicability of the dual consolidated loss rules with respect to the QDMTT and IIR are issued). Comments asserted that the extension of the foreign use exception is warranted to provide certainty and to take into account further developments from the OECD, such as the possible future application of the duplicate loss arrangement rules outside the context of the Transitional CbCR Safe Harbour.

The Treasury Department and the IRS are of the view that it is appropriate to extend, for a limited period, relief from the application of the dual consolidated loss rules with respect to the GloBE Model Rules. This would provide taxpayers more certainty, allow for further consideration of these proposed regulations and comments that may be submitted, and allow for consideration of any future developments at the OECD. Extending the relief only for a limited period is intended to minimize the double-deduction outcomes that may result. Accordingly, and subject to an anti-abuse rule, these proposed regulations provide that the dual consolidated loss rules apply without taking into account QDMTTs or Top-up Taxes with respect to losses incurred in taxable years beginning before August 6, 2024. *See* proposed § 1.1503(d)–8(b)(12).

In addition to not being limited to legacy DCLs, this transition relief differs from the relief provided in Notice 2023–80 in that it applies beyond foreign use, applying with respect to all the dual consolidated loss rules (including foreign use). This broader relief is intended, in part, to relieve the administrative burden of having to file a domestic use election and annual certifications for dual consolidated losses that would otherwise qualify for the foreign use exception described in Notice 2023–80 (or for the additional relief provided under the proposed regulations). Further, this would prevent a loss from being subject to recapture as a result of a triggering event other than a foreign use, such as the failure to file an annual certification.

6. Interaction With Anti-Hybrid Rules

As noted in part IV.B of the Background section of this preamble, the Treasury Department and the IRS are studying the interaction of the GloBE Model Rules with the rules under sections 245A(e) and 267A and request comments in this regard. For example, the Treasury Department and the IRS are considering whether a foreign country's traditional income tax and a Top-up Tax with respect to the operations in the foreign country should be viewed as part of the same ''tax laws''

[17] *See* the Hybrid Mismatch Report; OECD/G20, Neutralising the Effects of Branch Mismatch Arrangements, Action 2: Inclusive Framework on BEPS (July 2017).

[18] *See,* for example, New Zealand's Tax Information Bulletin, Vol. 31 No. 3 April 2019 at p. 50, which discusses New Zealand's deduction disallowance rules that are based on the double-deduction rules in the Hybrid Mismatch Report. In discussing the interaction of the New Zealand rules with the dual consolidated loss rules, the Bulletin provides:

Expenditure incurred by a US taxpayer, or a New Zealand hybrid entity which is deductible by a US owner, will not be subject to [New Zealand's deduction disallowance rules] so long as the US taxpayer is subject to the [dual consolidated loss] rules and has not made a domestic use election. If the US taxpayer has made a domestic use election, then [the New Zealand deduction disallowance rules] will apply to deny a deduction for the expenditure. That is because the domestic use election is an election that the [dual consolidated loss] rules do not apply to the US taxpayer in respect of the relevant expenditure.

of the country for purposes of section 267A.

E. Applicability Dates

Proposed § 1.1502–13(j)(10), relating to the interaction of the dual consolidated loss rules with the intercompany transaction regulations, is proposed to apply to taxable years for which the original Federal income tax return is due (without extensions) after the date that final regulations are published in the **Federal Register**. *See* proposed § 1.1502–13(l)(11). However, taxpayers may apply proposed § 1.1502–13(j)(10), once published in the **Federal Register** as final regulations, to an earlier taxable year that remains open, provided that the taxpayer and all members of its consolidated group apply the regulations consistently in that taxable year and each subsequent taxable year. *See id.*

The parenthetical in proposed § 1.1503(d)–1(c)(1)(ii), clarifying that a specified foreign tax resident that is a disregarded entity can be related to a domestic consenting corporation for purposes of § 1.1503(d)–1(c)(1)(ii), is proposed to apply to determinations relating to taxable years ending on or after August 6, 2024. *See* proposed § 1.1503(d)–8(b)(6).

Proposed § 1.1503(d)–5(b)(2)(iv) and (c)(4)(iv), relating to the attribution of items arising from ownership of stock, are proposed to apply to taxable years ending on or after August 6, 2024. *See* proposed § 1.1503(d)–8(b)(9).

The fourth and fifth sentences of proposed § 1.1503(d)–5(c)(3)(i), relating to the adjustments to conform to U.S. tax principles, are proposed to apply to taxable years ending on or after August 6, 2024. *See* proposed § 1.1503(d)–8(b)(10). As noted in part I.B.2 of this Explanation of Provisions, the proposed addition of these two sentences is intended merely to clarify the existing regulation for the avoidance of any doubt. The IRS may challenge contrary positions for taxable years ending before August 6, 2024 under the rules applicable to such taxable years.

Proposed § 1.1503(d)–8(b)(12), relating to the application of the dual consolidated loss rules without regard to QDMTTs or Top-up Taxes, applies with respect to losses incurred in taxable years beginning before August 6, 2024.

Proposed § 1.1503(d)–3(c)(9), relating to the foreign use exception for qualification for the Transitional CbCR Safe Harbour, is proposed to apply to taxable years beginning on or after August 6, 2024. *See* proposed § 1.1503(d)–8(b)(13).

Proposed §§ 1.1503(d)–1(b)(4)(i)(A)(*2*), 1.1503(d)–1(b)(4)(i)(B)(*2*), and 1.1503(d)–1(b)(4)(ii)(B)(*2*), relating to separate units arising as a result of a QDMTT or IIR, apply to taxable years beginning on or after August 6, 2024. *See* proposed § 1.1503(d)–8(b)(14).

Proposed § 1.1503(d)–1(f), relating to an anti-avoidance rule, is proposed to apply to taxable years ending on or after August 6, 2024. *See* proposed § 1.1503(d)–8(b)(15).

Proposed § 1.1503(d)–1(b)(6)(ii), relating to minimum taxes and taxes based on financial accounting principles, is proposed to apply to taxable years ending on or after August 6, 2024. *See* proposed § 1.1503(d)–8(b)(16).

A taxpayer may rely on these proposed regulations for any taxable year ending on or after August 6, 2024 and beginning on or before the date that regulations finalizing these proposed regulations are published in the **Federal Register**, provided that the taxpayer and all members of its consolidated group apply the proposed regulations in their entirety and in a consistent manner for all taxable years beginning with the first taxable year of reliance until the applicability date of those final regulations. In addition, a taxpayer may rely on the foreign use exception described in Notice 2023–80 for any taxable year ending on or after December 11, 2023 and before August 6, 2024, provided that the taxpayer and all members of its consolidated group apply those rules in their entirety and in a consistent manner for all taxable years beginning with the first taxable year of reliance until the applicability date of the final regulations on this topic.

II. Rules Regarding Disregarded Payment Losses

A. Overview

The preamble to the 2018 proposed regulations describes structures involving payments from foreign disregarded entities to their domestic corporate owners that are regarded for foreign tax purposes but disregarded for U.S. tax purposes. For foreign tax purposes, the payments give rise to a deduction or loss that, for example, can be surrendered (or otherwise used, such as through a consolidation regime) to offset non-dual inclusion income. The preamble notes that these structures are not addressed under the current section 1503(d) regulations but give rise to significant policy concerns that are similar to those arising under sections 245A(e), 267A, and 1503(d). In addition, the preamble states that the Treasury Department and the IRS are studying these transactions and request comments.

In response to this request, a comment agreed that these structures can produce a deduction/no-inclusion (''D/NI'') outcome. In a similar context, the comment asserted that arriving at the correct result would generally require, for U.S. tax purposes, disaggregating a disregarded payment into a regarded item of deduction and a regarded item of income, and taking such items into account for purposes of the dual consolidated loss rules to the extent reflected on the books and records of the entity. However, the comment did not recommend this approach due to complexity, noting, for example, that it would require tracking of transactions between a foreign disregarded entity and its domestic corporate owner, as well as determining the character and source of items that would not otherwise exist for U.S. tax purposes. To mitigate certain D/NI outcomes, the comment recommended an alternative approach, which would track disregarded items only so as to offset regarded items, and thus not so as to create items of income and deduction. The comment conceded, however, that this approach would not address the paradigm structure involving only disregarded deductions that give rise to D/NI outcomes and therefore would not address the policy concerns. The comment queried whether it might be better for the dual consolidated loss rules not to apply, with the expectation that the foreign jurisdiction could, in some cases, eliminate D/NI outcomes by denying the foreign tax deduction.

The Treasury Department and the IRS are of the view that treating items otherwise disregarded for U.S. tax purposes as regarded could give rise to considerable complexity, and that the alternative approach recommended by the comment would not address the paradigm structure, and therefore would not sufficiently address the policy concerns underlying these structures. Accordingly, neither of these approaches is adopted. However, the Treasury Department and the IRS are not of the view that these structures should be addressed only to the extent of applicable foreign tax rules addressing D/NI outcomes; in the absence of a foreign tax rule denying a foreign tax deduction, these structures would continue to give rise to the significant policy concerns noted above. In addition, the OECD/G20 recommends defensive rules that require income inclusions to neutralize D/NI outcomes. *See, for example,* Hybrid Mismatch

Report Recommendations 1.1(b) and 3.1(b).

Accordingly, the proposed regulations address these structures through the entity classification rules under section 7701 and the dual consolidated loss rules under section 1503(d), in a manner that is consistent with the ''domestic consenting corporation'' approach under §§ 301.7701–3(c)(3) and 1.1503(d)–1(c) addressing domestic reverse hybrids. Under this approach, when certain eligible entities (''specified eligible entities'') are treated as disregarded entities for U.S. tax purposes, a domestic corporation that acquires, or on the effective date of the election directly or indirectly owns, interests in such a specified eligible entity consents to be subject to the rules of proposed § 1.1503(d)–1(d). *See* proposed § 301.7701–3(c)(4)(i).

Pursuant to these rules (the ''disregarded payment loss'' rules), and as further discussed in part II.B. of this Explanation of Provisions, the domestic corporation agrees that it will monitor a net loss of the entity under a foreign tax law that is composed of certain payments that are disregarded for U.S. tax purposes and, if a D/NI outcome occurs as to the loss, include in gross income an amount equal to the loss. *See* proposed § 1.1503(d)–1(d)(1). The Treasury Department and the IRS are of the view that the domestic corporation's inclusion of the amount in gross income generally neutralizes the D/NI outcome, and places the parties in approximately the same position in which they would have been had the specified eligible entity not been permitted to be classified as a disregarded entity. In addition, the Treasury Department and the IRS are of the view that this approach is more administrable than alternative approaches, such as disaggregating each disregarded payment into a regarded item of deduction and income, or, upon a D/NI outcome as to the loss, terminating the specified eligible entity's classification retroactive to the taxable year in which the loss was incurred. These alternative approaches would have the same effect of giving rise to an item of income to the domestic corporation because the payment would be regarded.

The proposed regulations also include a deemed consent rule pursuant to which, beginning on the date that is twelve months after the date that the disregarded payment loss rules are applicable, a domestic corporation that directly or indirectly owns interests in a specified eligible entity is deemed to consent to be subject to the rules, to the extent it has not otherwise so consented. *See* proposed § 301.7701–3(c)(4)(iii) and (vi). This default rule is intended to reflect the result that taxpayers would be expected to favor (for example, to avoid the various income inclusion rules that would typically apply upon the conversion of a hybrid entity to a foreign corporation). However, the deemed consent can be avoided if the specified eligible entity elects to be treated as an association.[19] *See* proposed § 301.7701–3(c)(4)(iv). Further, the twelve-month delay for deemed consent provides an opportunity to restructure existing arrangements to avoid the application of the disregarded payment loss rules without changing the classification of a specified eligible entity.

B. Consequences of Consent

1. In General

When a domestic corporation consents to be subject to the disregarded payment loss rules, the domestic corporation agrees that if the specified eligible entity (described below) incurs a disregarded payment loss during a certification period (discussed in section II.B.3 of this Explanation of Provisions) and a triggering event occurs with respect to that loss, then the domestic corporation will include in gross income the DPL inclusion amount. *See* proposed § 1.1503(d)–1(d)(1)(i). These rules also apply to a disregarded payment loss of a foreign branch of the domestic corporation because disregarded payments from the domestic corporation to the specified eligible entity may, under the branch's tax law, be attributable to, and deductible by, the branch and thus could produce a D/NI outcome (for example, if the branch surrendered the loss to a foreign corporation). *See id.*

In general, a specified eligible entity is an entity that, when classified as a disregarded entity, could pay or receive amounts that could give rise to a D/NI outcome by reason of being disregarded for U.S. tax purposes but deductible for foreign tax purposes. Thus, a specified eligible entity includes an eligible entity (regardless of whether domestic or foreign) that is a foreign tax resident (which, in the case of a domestic eligible entity, may occur, for example, if the entity is managed and controlled in a foreign country), because amounts paid by such an entity may be disregarded for U.S. tax purposes but deductible for foreign tax purposes. *See* proposed § 301.7701–3(c)(4)(i).

[19] The deemed consent rule could also be avoided by restructuring such that the rule would not apply, for example, by contributing the interests in the specified eligible entity to a foreign corporation or by converting the entity into a partnership.

2. Disregarded Payment Loss Computation

A disregarded payment loss with respect to a specified eligible entity or a foreign branch (in either case, a ''disregarded payment entity,'' and the domestic corporation that consents to be subject to the disregarded payment loss rules, the ''specified domestic owner'' of the disregarded payment entity) is computed for each foreign taxable year of the entity. *See* proposed § 1.1503(d)–1(d)(6)(ii). The disregarded payment loss generally measures the entity's net loss, if any, for foreign tax purposes that is composed of certain payments that are disregarded for U.S. tax purposes as transactions between the disregarded payment entity and its tax owner (for example, a payment by the disregarded payment entity to the specified domestic owner or to another disregarded payment entity of the specified domestic owner), or as a transaction between a foreign branch and its home office (for example, a payment by the foreign branch to a disregarded entity of the specified domestic owner). *See id.* That is, it generally measures the entity's net loss that, but for the disregarded payment loss rules, could produce a D/NI outcome. For example, if for a foreign taxable year a disregarded payment entity's only items are a $100x interest deduction and $70x of royalty income, and if each item were disregarded for U.S. tax purposes as a payment between a disregarded entity and its tax owner (but taken into account under foreign law), then the entity would have a $30x disregarded payment loss for the taxable year.

In general, the items of deduction taken into account for purposes of computing a disregarded payment loss include any item that is deductible under the relevant foreign tax law, is disregarded for U.S. tax purposes and, if regarded for U.S. tax purposes, would be interest, a structured payment, or a royalty within the meaning of § 1.267A–5(a)(12), (b)(5)(ii), or (a)(16), respectively. *See* proposed § 1.1503(d)–1(d)(6)(ii)(C). Similar rules apply for determining items of income that offset the items of income for purposes of determining a disregarded payment loss. *See* proposed § 1.1503(d)–1(d)(6)(ii)(D). The Treasury Department and the IRS are of the view that defining a duplicated payment loss in this manner tailors the application of the rules to arrangements that are likely structured to produce a D/NI outcome. Moreover, this approach is consistent with the scope of section 267A. In addition, only items generated or incurred during a

period in which an interest in the disregarded payment entity is a separate unit are taken into account. *See* proposed § 1.1503(d)–1(d)(6)(ii). In other words, items generally are taken into account only to the extent they would be subject to the dual consolidated loss rules but for the items being disregarded for U.S. tax purposes. Thus, for example, if a domestic corporation becomes a dual resident corporation as a result of changing its place of management, disregarded payments made to or from a domestic disregarded entity held by the domestic corporation are not taken into account in computing a disregarded payment loss to the extent such payments gave rise to a deduction under the relevant foreign law before the domestic corporation was a dual resident corporation subject to the dual consolidated loss rules.

The rules for computing a disregarded payment loss therefore differ in certain respects from comparable rules applicable for purposes of computing a dual consolidated loss. For example, the latter rules do not take into account the deductibility of an item under a foreign tax law and are not limited to interest, structured payments, or royalties. *See* § 1.1503(d)–5(b) through (d).

3. Triggering Events

In general, the specified domestic owner must include in gross income the DPL inclusion amount with respect to a disregarded payment loss if either of two triggering events occurs with respect to the loss during a certification period (the ''DPL certification period''). *See* proposed § 1.1503(d)–1(d)(2)(i). The DPL certification period includes the foreign taxable year in which the disregarded payment loss is incurred, any prior foreign taxable year, and the subsequent 60-month period. *See* proposed § 1.1503(d)–1(d)(6)(iii); *but see* proposed 1.1503(d)–1(d)(7)(iii) (terminating the certification period upon a sale of the disregarded payment entity). This proposed definition is consistent with the certification period under the dual consolidated loss rules, which is revised to include at least the 60-month period following the year in which the dual consolidated loss is incurred, as well as all taxable years (unlike the disregarded payment loss rules, as determined under U.S. tax law) before the taxable year in which a dual consolidated loss is incurred. *See* proposed § 1.1503(d)–1(b)(20).

The two triggering events are based on certain principles of the dual consolidated loss rules. *See* proposed § 1.1503(d)–1(d)(3). The first triggering event addresses likely D/NI outcomes—that is, a foreign use of the disregarded payment loss (determined by taking into account the exceptions described in § 1.1503(d)–3(c)).[20] *See* proposed § 1.1503(d)–1(d)(3)(i). However, for purposes of determining whether a foreign use occurs (and unlike the approach under the dual consolidated loss rules), only persons that are related to the specified domestic owner are taken into account. *See id.* This limitation is intended to minimize triggering events resulting from transactions that are not tax motivated, such as a foreign use resulting from the sale of a disregarded payment entity to an unrelated person, yet still deter arrangements structured to produce D/NI outcomes that typically involve related parties. Thus, for example, a foreign use triggering event occurs if, under a foreign tax law, a deduction taken into account in computing the disregarded payment loss is made available (including by reason of a foreign consolidation regime or similar regime, or a sale, merger, or similar transaction) to offset an item of income that, for U.S. tax purposes, is an item of a foreign corporation, but only if that foreign corporation is related to the specified domestic owner of the disregarded payment entity.

The second triggering event is a failure by the specified domestic owner to comply with certification requirements. *See* proposed § 1.1503(d)–1(d)(3)(ii). In general, the specified domestic owner must, for the foreign taxable year in which a disregarded payment loss is incurred, and for each subsequent taxable year within the DPL certification period, file a statement providing information about the disregarded payment loss of such entity and certifying that a foreign use of the disregarded payment loss has not occurred. *See* proposed § 1.1503(d)–1(d)(4). Relief is available for a failure to properly comply with the certification requirements. *See* proposed § 1.1503(d)–1(e).

For simplicity purposes, the proposed regulations include fewer triggering events than the dual consolidated loss rules. For example, the disregarded payment loss triggering events do not include specific triggering events related to the transfer of assets of, or interests in, a disregarded payment entity. Nevertheless, the scope of the disregarded payment loss triggering events is, in general, consistent with that of the dual consolidated loss triggering events because a foreign use triggering event typically occurs, or will occur, in connection with other dual consolidated loss triggering events that are not rebutted. For example, the transfer of all the interests in a disregarded entity by its domestic owner to a related and wholly owned foreign corporation would constitute a triggering event described in § 1.1503(d)–6(e)(1)(v) (transfer of 50 percent or more of an interest in a separate unit). However, such a transfer would also typically give rise to a foreign use triggering event described in § 1.1503(d)–6(e)(1)(i) because a portion of a deduction or loss taken into account in computing the dual consolidated loss would generally carry over under foreign law following the transfer and thus be made available to offset or reduce an item that is recognized as income or gain under foreign law and that is, or would be, considered under U.S. tax principles to be an item of a foreign corporation. *See* § 1.1503(d)–3(a)(1). Many of these non-foreign use dual consolidated loss triggering events are intended to heighten awareness that certain transactions or events are likely to give rise to a foreign use, which results in a double-deduction outcome, and therefore serve to increase compliance with the rules. Because D/NI outcomes from disregarded payment losses involve only related parties and typically are highly-structured, however, the Treasury Department and the IRS are of the view that the foreign use and certification triggering events are sufficient for purposes of the disregarded payment loss rules.

4. DPL Inclusion Amount

In general, the DPL inclusion amount is, with respect to a disregarded payment loss as to which a triggering event occurs during the DPL certification period, the amount of the disregarded payment loss. *See* proposed § 1.1503(d)–1(d)(2)(i). For U.S. tax purposes, the DPL inclusion amount is treated as ordinary income and characterized in the same manner as if the amount were interest or royalty income paid by a foreign corporation. *See* proposed § 1.1503(d)–1(d)(2)(ii).

In certain cases, the DPL inclusion amount is reduced by the positive balance, if any, of the ''DPL cumulative register'' with respect to the disregarded payment entity. *See* proposed § 1.1503(d)–1(d)(5)(i). The DPL cumulative register is similar to the cumulative register for dual

[20] Because an expense resulting from an Intragroup Financing Arrangement is generally excluded from the calculation of a Low-Tax Entity's GloBE Income or loss if there is no commensurate increase in the taxable income of the High-Tax Counterparty, a disregarded payment loss (that is, a payment that generally does not increase U.S. taxable income) should generally not be put to a foreign use as a result of jurisdictional blending under the GloBE Model Rules.

consolidated loss purposes, and generally reflects each disregarded payment loss or amount of ''disregarded payment income'' of a disregarded payment entity. *See* § 1.1503(d)–1(d)(5)(ii). Disregarded payment income is computed in a manner similar to that of computing a disregarded payment loss, and measures a disregarded payment entity's net income, if any, for a foreign taxable year that is composed of certain disregarded payments attributable to interest, structured payments, or royalties. *See* proposed § 1.1503(d)–1(d)(6)(ii). Taking into account whether there is sufficient cumulative register to absorb a disregarded payment loss is intended to ensure that the DPL inclusion amount represents only the portion of the disregarded payment loss that is available to be put to a foreign use under the foreign tax law. For example, if a disregarded payment entity incurs a $100x disregarded payment loss in year 1 and has $80x of disregarded payment income in year 2, only $20x of the disregarded payment loss is likely available under the foreign tax law to be put to a foreign use. As such, if a triggering event occurs at the end of year 2, then the specified domestic owner must include in gross income $20x (rather than the entire $100x of the disregarded payment loss).

5. Disregarded Payment Entity Combination Rule

Similar to the dual consolidated loss rules, the proposed regulations include a rule pursuant to which disregarded payment entities for which the relevant foreign tax law is the same (''individual disregarded payment entities'') are generally combined and treated as a single disregarded payment entity (''combined disregarded payment entity'') for purposes of the disregarded payment loss rules. *See* proposed § 1.1503(d)–1(d)(7)(i); *see also* § 1.1503(d)–1(b)(4)(ii) (combined separate unit rule for dual consolidated loss purposes). Accordingly, for a foreign taxable year, only a single amount of disregarded payment income or a single disregarded payment loss exists with respect to the combined disregarded payment entity. This amount is computed by first determining the disregarded payment income or loss with respect to each of the individual disregarded payment entities and then aggregating such amounts.

This combination rule is intended to prevent the application of the disregarded payment loss rules to cases in which, taking into account the overall effect of disregarded payments under a foreign tax law, there is not an opportunity for a disregarded payment loss of an individual disregarded payment entity to produce a D/NI outcome. For example, assume USP, a domestic corporation, wholly owns DE1X, which wholly owns DE2X, and each of DE1X and DE2X is a disregarded payment entity tax resident in Country X. Further assume that, computed on a separate basis during a foreign taxable year, DE1X has a $100x disregarded payment loss (consisting solely of a $100x payment by DE1X to DE2X), and DE2X has $100x of disregarded payment income (consisting solely of the $100x payment received by DE2X from DE1X). Absent the combination rule, the specified domestic owner of DE1X would be required to monitor DE1X's disregarded payment loss and annually certify that no foreign use has occurred with respect to the loss. However, taking into account the overall effect of the payment under Country X law, there is likely to be no net loss attributable to the payment and, as a result, there likely is not an opportunity for the payment to give rise to a D/NI outcome. The combination rule thus limits the application of the disregarded payment loss rules to cases in which it is likely that disregarded payments could give rise to a D/NI outcome.

6. Application to Dual Resident Corporations

The proposed regulations include special rules pursuant to which the disregarded payment loss rules also apply to dual resident corporations, because a disregarded payment by a dual resident corporation to its disregarded entity could also give rise to a D/NI outcome (for example, if the dual resident corporation surrenders the loss to a foreign corporation). Thus, pursuant to the consent rules described in part II.A of this Explanation of Provisions, a dual resident corporation that directly or indirectly owns interests in an eligible entity that is classified as a disregarded entity agrees, for purposes of the disregarded payment loss rules, to be treated as a disregarded payment entity and as a specified owner of such disregarded payment entity. *See* proposed §§ 1.1503(d)–1(d)(1)(ii) and 301.7701–3(c)(4)(ii).

C. Interaction With Dual Consolidated Loss Rules

Although the disregarded payment loss rules address similar policy concerns as, and rely on certain aspects of, the existing dual consolidated loss rules, the Treasury Department and the IRS are of the view that integrating the two regimes would result in considerable complexity and administrative burden. For example, integrating the regimes could require rules pursuant to which a disregarded payment entity's deduction under a foreign tax law for a disregarded payment is considered to in part offset the entity's items of regarded income (which would have the effect of increasing a dual consolidated loss, relative to not taking into account the payment for purposes of the dual consolidated loss rules) and to in part offset the entity's items of income that are disregarded for U.S. tax purposes (which would have the effect of decreasing a disregarded payment loss, relative to only taking into account the payment for purposes of the disregarded payment loss rules).

The disregarded payment loss rules therefore operate independently of the dual consolidated loss rules. Thus, for example, only items that are regarded for U.S. tax purposes are taken into account in computing a dual consolidated loss (or cumulative register), and only items that are disregarded for U.S. tax purposes are taken into account in computing a disregarded payment loss (or DPL cumulative register). In addition, a disregarded payment entity may have both a dual consolidated loss and a disregarded payment loss for the same taxable year, and both of these items could be triggered by a single event (such as a foreign use pursuant to a foreign loss surrender regime); in contrast, a foreign use could be avoided both for a dual consolidated loss and disregarded payment loss of the same disregarded payment entity if, for example, an election is required to enable a foreign use and no such election is made.

As discussed in part I.B of the Background section of this preamble, the dual consolidated loss rules do not take into account disregarded transactions (that typically are regarded for foreign tax purposes) for purposes of attributing items to a separate unit or an interest in a transparent entity. This approach, which minimizes the need for additional complex rules, can result in both the over- and under-application of the dual consolidated loss rules as compared to more precise rules that would take into account such items to the extent necessary to neutralize double-deduction outcomes. Thus, the decision to ignore disregarded transactions in the dual consolidated loss rules for this purpose reflects a balance of policy and administrability. In other contexts, various policy objectives have required giving effect to certain disregarded transactions. *See, for*

example, § 1.904–4(f)(2)(vi) (attributing gross income to a foreign branch) and § 1.951A–2(c)(7)(ii)(B)(*2*) (determining gross income for purposes of applying the high-tax exception). The Treasury Department and the IRS are of the view that, in light of the policies underlying the enactment of sections 245A(e), 267A, and 1503(d), the disregarded payment loss rules are another case where it is necessary to take into account disregarded transactions; the absence of such rules would otherwise permit taxpayers to continue to implement structures involving such payments to obtain D/NI outcomes. The Treasury Department and the IRS will continue to study the treatment of disregarded items for purposes of the dual consolidated loss rules, including whether it may be appropriate to take into account items of disregarded income, gain, deduction or loss in other cases.

D. Applicability Date

The proposed rules relating to consent to be subject to the disregarded payment loss rules are proposed to apply to entity classification elections filed on or after August 6, 2024 (regardless of whether the election is effective before August 6, 2024). See proposed § 301.7701–3(c)(4)(vi)(A). The proposed rule relating to deemed consent is proposed to apply on or after August 6, 2025. See proposed § 301.7701–3(c)(4)(vi)(B). The proposed rules relating to disregarded payment losses are proposed to apply to taxable years ending on or after August 6, 2024. *See* proposed § 1.1503(d)–8(b)(11).

Conforming Amendments to Other Regulations

The Treasury Department and the IRS intend to make conforming amendments to the regulations under section 1503(d), including with respect to examples, upon finalization of the proposed regulations.

Special Analyses

I. Regulatory Planning and Review

Pursuant to the Memorandum of Agreement, Review of Treasury Regulations under Executive Order 12866 (June 9, 2023), tax regulatory actions issued by the IRS are not subject to the requirements of section 6 of Executive Order 12866, as amended. Therefore, a regulatory impact assessment is not required.

II. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) (''PRA'') requires that a Federal agency obtain the approval of the OMB before collecting information from the public, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit. Section 1.1503(d)–1(d)(4) of these proposed regulations requires the collection of information.

As discussed in part II.B of this Explanation of Provisions, the proposed regulations require certain taxpayers to certify that no foreign use has occurred with respect to a disregarded payment loss. The IRS will use this information to determine the extent to which these taxpayers need to recognize income under the proposed regulations.

The reporting burden associated with this collection of information will be reflected in the PRA submissions associated with Form 1120 (OMB control number 1545–0123). The Treasury Department and the IRS do not have readily available data to determine the number of taxpayers affected by this collection of information because no reporting module currently identifies these types of disregarded payments. The Treasury Department and the IRS request comments on all aspects of information collection burdens related to the proposed regulations, including ways for the IRS to minimize the paperwork burden.

III. Regulatory Flexibility Act

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (5 U.S.C. chapter 6) (''RFA'') requires the agency to prepare and make available for public comment an initial regulatory flexibility analysis that will describe the impact of the proposed rule on small entities. *See* 5 U.S.C. 603(a). Section 605 of the RFA provides an exception to this requirement if the agency certifies that the proposed rulemaking will not have a significant economic impact on a substantial number of small entities. A small entity is defined as a small business, small nonprofit organization, or small governmental jurisdiction. *See* 5 U.S.C. 601(3) through (6).

The Treasury Department and the IRS do not expect that the proposed dual consolidated loss regulations described in parts I.A, I.B, and I.C of the Explanation of Provisions will have a significant economic impact on a substantial number of small entities because those regulations refine computations under the current dual consolidated loss regulations without changing the economic impact of the current regulations. Further, the Treasury Department and the IRS do not expect the proposed dual consolidated loss regulations described in parts I.D.1 through I.D.6 of the Explanation of Provisions will have a significant economic impact on a substantial number of small entities because they provide exceptions and other rules that limit the application of the current dual consolidated loss regulations. However, because there is a possibility of significant economic impact on a substantial number of small entities, an initial regulatory flexibility analysis for the regulation is provided below. The Treasury Department and the IRS request comments from the public on the number of small entities that may be impacted and whether that impact will be economically significant.

A. Reasons Why Action Is Being Considered

The proposed dual consolidated loss regulations described in parts I.A through I.D of the Explanation of Provisions address potential uncertainty, and refine or adjust certain computations, under current law. In addition, the proposed dual consolidated loss regulations provide limited exceptions to the application of the dual consolidated loss rules where not inconsistent with the general policy underlying those rules. As a result, this portion of the proposed regulations increases the precision of the dual consolidated loss regulations and reduces inappropriate planning opportunities.

As explained in part II.A of the Explanation of Provisions, the proposed disregarded payment loss regulations address certain hybrid payments that can give rise to deduction/no-inclusion outcomes.

B. Objectives of, and Legal Basis for, the Proposed Regulations

The proposed regulations described in parts I.A, I.B, I.C, I.D.1, I.D.2, and I.D.4 of the Explanation of Provisions address potential uncertainty, and refine or adjust certain computations, under the current dual consolidated loss regulations. The proposed dual consolidated loss regulations described in parts I.D.3 and I.D.5 of the Explanation of Provisions limit the application of the current dual consolidated loss regulations. The proposed disregarded payment loss regulations described in part II of the Explanation of Provisions require an income inclusion for U.S. tax purposes to eliminate the deduction/no-inclusion outcome that would otherwise arise from certain hybrid payments. The legal basis for these regulations is contained in sections 1502, 1503(d), 7701, and 7805.

C. Small Entities to Which These Regulations Will Apply

Because an estimate of the number of small businesses affected is not currently feasible, this initial regulatory flexibility analysis assumes that a substantial number of small businesses will be affected. The Treasury Department and the IRS do not expect that these proposed regulations will affect a substantial number of small nonprofit organizations or small governmental jurisdictions.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The proposed dual consolidated loss regulations do not impose additional reporting or recordkeeping obligations. The proposed disregarded payment loss regulations impose a certification requirement that is filed with a domestic corporation's tax return.

E. Duplicate, Overlapping, or Relevant Federal Rules

These proposed regulations would replace portions of the dual consolidated loss regulations. The Treasury Department and the IRS are not aware of any Federal rules that duplicate, overlap, or conflict with these proposed regulations.

F. Alternatives Considered

The Treasury Department and the IRS did not consider any significant alternative to the proposed dual consolidated loss regulations. The proposed regulations described in parts I.A, I.B, I.C, I.D.1, I.D.2, and I.D.4 of the Explanation of Provisions simply address potential uncertainty, or refine or adjust certain computations, under current law. The proposed regulations described in parts I.D.3 and I.D.5 of the Explanation of Provisions limit the application of the dual consolidated loss regulations. As a result, the proposed dual consolidated loss regulations do not impose an additional economic burden and, consequently, the regulations represent the approach with the least economic impact.

As discussed in part II.A of the Explanation of Provisions, the proposed disregarded payment loss regulations address policy concerns that are similar to the concerns underlying the enactment of sections 245A(e), 267A, and 1503(d). Sections 245A, 267A, and 1503(d) apply uniformly to large and small business entities, and the Treasury Department and the IRS are of the view that the proposed disregarded payment loss regulations should generally apply without regard to the size of the corporation—a small business exception would undermine the anti-hybridity policies underlying these regulations. Accordingly, there is no viable alternative to the proposed regulations for small entities.

Pursuant to section 7805(f) of the Code, the proposed regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small businesses. The Treasury Department and the IRS also request comments from the public on the analysis in part III of the Special Analyses.

IV. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (''UMRA'') requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. The proposed rules do not include any Federal mandate that may result in expenditures by State, local, or Tribal governments, or by the private sector in excess of that threshold.

V. Executive Order 13132: Federalism

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of Executive Order 13132. The proposed rules do not have federalism implications and do not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of Executive Order 13132.

Incorporation by Reference

Sections 1.1503(d)–1(b)(4)(i)(A)(*2*), (b)(4)(i)(B)(*2*), (b)(4)(ii)(B)(*2*), and (b)(21), and §§ 1.1503(d)–3(c)(9), 1.1503(d)–7(b)(16) and (c)(3), and 1.1503(d)–8(b)(12) of these proposed regulations use terminology based on their definitions under the GloBE Model Rules and the GloBE Model Rules Consolidated Commentary. The Office of the Federal Register has regulations concerning incorporation by reference. 1 CFR part 51. These regulations require that agencies must discuss in the preamble to a rule or proposed rule the way in which materials that the agency incorporates by reference are reasonably available to interested persons, and how interested parties can obtain the materials. 1 CFR 51.5(b).

The GloBE Model Rules and Administrative Guidance addressing Hybrid Arbitrage Arrangements are discussed in Part IV of the Background section of this preamble. The GloBE Model Rules and the GloBE Model Rules Consolidated Commentary were issued by the OECD on December 20, 2021, and April 25, 2024, respectively, and are available at *www.oecd.org/tax/beps/tax-challenges-arising-from-the-digitalisation-of-the-economy-global-anti-base-erosion-model-rules-pillar-two.htm.* The Administrative Guidance was issued on December 15, 2023, and is available at *www.oecd.org/tax/beps/administrative-guidance-global-anti-base-erosion-rules-pillar-two-june-2024.pdf.*

Comments and Requests for Public Hearing

Before these proposed amendments to the final regulations are adopted as final regulations, consideration will be given to comments that are submitted timely to the IRS as prescribed in this preamble under the **ADDRESSES** heading. In addition to the comments specifically requested in the Explanation of Provisions, the Treasury Department and the IRS request comments on all other aspects of the proposed regulations. Any comments submitted will be made available at *https://www.regulations.gov* or upon request.

A public hearing will be scheduled if requested in writing by any person who timely submits electronic or written comments. Requests for a public hearing are also encouraged to be made electronically. If a public hearing is scheduled, notice of the date and time for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these regulations are Andrew L. Wigmore of the Office of Associate Chief Counsel (International) and Julie Wang of the Office of Associate Chief Counsel (Corporate). However, other personnel from the Treasury Department and the IRS participated in their development.

Statement of Availability of IRS Documents

IRS Revenue Procedures, Revenue Rulings, Notices, and other guidance cited in this document are published in the Internal Revenue Bulletin or Cumulative Bulletin and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at *https://www.irs.gov.*

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, the Treasury Department and the IRS propose to amend 26 CFR parts 1 and 301 as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by removing the entry for section 1.1503(d) and adding entries for sections 1.1503(d)–1 through 1.1503(d)–8 in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

* * * * *

Sections 1.1503(d)–1 through 8 also issued under 26 U.S.C. 953(d), 26 U.S.C. 1502, 26 U.S.C. 1503(d), 26 U.S.C. 1503(d)(2)(B), 26 U.S.C. 1503(d)(3), and 26 U.S.C. 1503(d)(4).

* * * * *

■ **Par. 2.** Section 1.1502–13, as proposed to be amended at 88 FR 52057 (August 7, 2023) and at 88 FR 78134 (November 14, 2023), is further amended by:

■ 1. In paragraph (a)(6)(ii) in the table revising the entry ''(G) Miscellaneous operating rules''.

■ 2. In paragraph (c)(5), adding the language ''*See* paragraph (j)(10) of this section for rules regarding the special status of a section 1503(d) member.'' after the last sentence.

■ 3. Redesignating paragraph (j)(10) as paragraph (j)(15).

■ 4. Adding new paragraph (j)(10).

■ 5. Adding and reserving paragraphs (j)(11) through (14).

■ 6. Adding paragraphs (j)(15)(x) and (xi), and (l)(11).

The additions and revision read as follows:

§ 1.1502–13 Intercompany transactions.

(a) * * *

(6) * * *

(ii) * * *

Rule	General location	Paragraph	Example
*	*	*	* * * *
(G) Miscellaneous operating rules..	§ 1.1502–13(j)(15) ..	(i)	Example 1. Intercompany sale followed by section 351 transfer to member.
		(ii)	Example 2. Intercompany sale of member stock followed by recapitalization.
		(iii)	Example 3. Back-to-back intercompany transactions—matching.
		(iv)	Example 4. Back-to-back intercompany transactions—acceleration.
		(v)	Example 5. Successor group.
		(vi)	Example 6. Liquidation—80% distributee.
		(vii)	Example 7. Liquidation—no 80% distributee.
		(viii)	Example 8. Loan by section 987 QBU.
		(ix)	Example 9. Sale of property by section 987 QBU.
		(x)	Example 10. Interest on intercompany obligation.
		(xi)	Example 11. Loss of a section 1503(d) member.

* * * * *

(j) * * *

(10) *Dual consolidated loss rules*—(i) *Scope.* The rules of this paragraph (j)(10) apply to an intercompany transaction if either party to the transaction is a section 1503(d) member. A *section 1503(d) member* is a member that is—

(A) An affiliated dual resident corporation (as defined in § 1.1503(d)–1(b)(10)); or

(B) An affiliated domestic owner (as defined in § 1.1503(d)–1(b)(10)) acting through a separate unit (as defined in § 1.1503(d)–1(b)(4)) that is not regarded as separate from the domestic owner for Federal income tax purposes.

(ii) *Ordering rule for the section 1503(d) member.* In determining when the section 1503(d) member's intercompany (or corresponding) item is taken into account, the dual consolidated loss rules under section 1503(d) and the regulations thereunder (the *dual consolidated loss rules*) do not apply to the relevant item until that item would otherwise be taken into account under paragraph (c) or (d) of this section.

(iii) *Status as a section 1503(d) member.* A section 1503(d) member has special status under paragraph (c)(5) of this section with respect to its intercompany (or corresponding) items for purposes of applying the dual consolidated loss rules to those items. Therefore, for purposes of applying the dual consolidated loss rules, paragraph (c)(1)(i) of this section does not apply to redetermine the attributes of the section 1503(d) member's intercompany (or corresponding) items.

(iv) *Application of the matching rule to the counterparty member.* The special status of a section 1503(d) member does not affect the application of the matching rule in paragraph (c) of this section (or under paragraph (d) of this section, to the extent the matching rule principles are applicable) to the counterparty member in an intercompany transaction. For example, assume S sells depreciable property to B (a section 1503(d) member) at a gain, and the property is also subject to depreciation in the hands of B. For purposes of taking into account S's items, the matching rule applies as if B were not a section 1503(d) member. Therefore, even if B's annual depreciation deduction on the acquired property is limited under the dual consolidated loss rules and not currently deductible, S nevertheless takes into account a portion of its intercompany gain pursuant to the matching rule every year as if B were entitled to deduct the additional depreciation resulting from the intercompany sale.

* * * * *

(15) * * *

(x) *Example 10. Interest on intercompany obligation*—(A) *Facts.* S lends money to B, an affiliated dual resident corporation (a section 1503(d) member), with $10 of interest due annually for Year 1 through Year 5. For the years at issue, B has a dual consolidated loss (within the meaning of § 1.1503(d)–1(b)(5)(i)) with respect to which it makes a domestic use election (within the meaning of § 1.1503(d)–6(d)).

(B) *Analysis*—(*1*) *Interest expense deduction of the section 1503(d) member.* For each year at issue, B has $10 of interest expense deduction. Under paragraph

(j)(10)(ii) of this section, the matching rule in paragraph (c) of this section applies first (before the dual consolidated loss rules) to determine if B's deduction is taken into account. Pursuant to paragraph (c)(2)(i) of this section, B would take its $10 of interest deduction into account annually. Therefore, the amount of B's dual consolidated loss in each year reflects the $10 of interest expense.

(*2*) *Interest income of the counterparty member.* For each year at issue, S has $10 of interest income. Although B has a dual consolidated loss for each year at issue, B makes a domestic use election and deducts the $10 of interest expense annually. Under the matching rule in paragraph (c) of this section, for each year, S takes into account its $10 of interest income to match B's $10 of interest deduction.

(C) *Treatment for counterparty member when deduction is deferred.* The facts are the same as in paragraph (j)(15)(x)(A) of this section, except that for the years at issue, B's interest expense deduction would be limited under the domestic use limitation rule of § 1.1503(d)–4(b) (and no exception under § 1.1503(d)–6 applies) and is not currently deductible for the years at issue. Under paragraph (j)(10)(iv) of this section, the matching rule applies to S (the counterparty member) as if B did not have section 1503(d) member status. Therefore, for the purpose of determining S's income inclusion, B is treated as deducting $10 of interest expense per year. Thus, S's interest income is not redetermined to be deferred, even though B's interest expense deduction is deferred under the dual consolidated loss rules.

(D) *Treatment for counterparty member when a dual consolidated loss is recaptured.* The facts are the same as in paragraph (j)(15)(x)(A) of this section, with B making a domestic use election (within the meaning of § 1.1503(d)–6(d)) in Year 1 and deducting $10 of interest expense in Year 1. Then in Year 2, B is required under § 1.1503(d)–6(e) to recapture and report as ordinary income $10 (plus applicable interest) with respect to the $10 of interest expense incurred in Year 1. Because the matching rule applies to S (the counterparty member) as if B did not have its section 1503(d) member status, the recapture of B's Year 1 dual consolidated loss will not affect the treatment of S's intercompany interest income. *See* paragraph (j)(10)(iv) of this section.

(E) *Intercompany obligation involving an affiliated domestic owner.* The facts are the same as in paragraph (j)(15)(x)(A) of this section, except that B is an affiliated domestic owner with respect to a directly owned foreign branch separate unit, S lends money to this separate unit of B, and the $10 of interest expense, when it is taken into account under the section 1503(d) rules, would be attributable to B's foreign branch separate unit for the years at issue. The analysis and treatment of S's intercompany item and B's corresponding item (attributable to the separate unit) are the same as in paragraphs (j)(15)(x)(B), (C), and (D) of this section. However, if B does not act through its separate unit in entering the intercompany loan with S, the rules of paragraph (j)(10) of this section do not apply. *See* paragraph (j)(10)(i) of this section.

(xi) *Example 11. Loss of a section 1503(d) member*—(A) *Facts.* S is an affiliated dual resident corporation (a section 1503(d) member). S owns inventory with a basis of $100. In Year 1, S sells the inventory to B for $60. In Year 3, B sells the inventory to X for $110. For the years at issue, S's $40 of loss is subject to the domestic use limitation rule of § 1.1503(d)–4(b) (and no exception under § 1.1503(d)–6 applies) and would not be currently deductible.

(B) *Analysis*—(*1*) *Year 1 and Year 2: timing.* S recognizes $40 of loss on the intercompany inventory sale to B. Pursuant to the ordering rule in paragraph (j)(10)(ii) of this section, in each year, the matching rule in paragraph (c) of this section applies first to determine whether S's loss is taken into account. In Year 1 and Year 2, because the $40 of loss is deferred under the matching rule, no amount of loss from the sale is subject to the dual consolidated loss rules in those years.

(*2*) *Year 3: timing and attributes.* In Year 3, B sells the inventory to X for $110, for a $50 gain. Consequently, under the matching rule (disregarding the application of section 1503(d)), S's $40 of loss would be taken into account in that year. Since S's item would otherwise be taken into account, the section 1503(d) rules are applicable to the $40 loss in Year 3, and the loss would be subject to the domestic use limitation under § 1.1503(d)–4(b) and would not be currently deductible. The application of § 1.1503(d)–4(b) to limit S's loss is not subject to redetermination under paragraph (c)(1)(i) of this section, because S has special status. *See* paragraph (j)(10)(iii) of this section. Moreover, B's gain is taken into account in Year 3, without regard to S's status as a section 1503(d) member. *See* paragraph (j)(10)(iv) of this section.

(C) *Intercompany transaction involving a separate unit of an affiliated domestic owner.* The facts are the same as in paragraph (j)(15)(xi)(A) of this section, except that S is an affiliated domestic owner with respect to a directly owned foreign branch separate unit, and S acts through the foreign branch separate unit in selling the inventory to B such that the loss on the inventory, when it is taken into account under the section 1503(d) rules, would be attributable to S's foreign branch separate unit. The analysis and treatment of S's intercompany item (attributable to the foreign branch separate unit) and B's corresponding item are the same as in paragraphs (j)(15)(xi)(B)(*1*) and (*2*) of this section.

* * * * *

(l) * * *

(11) *Applicability date.* Paragraph (j)(10) of this section applies to taxable years for which the original Federal income tax return is due (without extensions) after [DATE OF PUBLICATION OF THE FINAL REGULATIONS IN THE **FEDERAL REGISTER**]. However, taxpayers may choose to apply these provisions to an earlier taxable year, if the period for the assessment of tax for that taxable year has not expired, provided the taxpayer and all members of its consolidated group apply these provisions consistently for that taxable year and each subsequent taxable year.

* * * * *

■ **Par. 3.** Section 1.1503(d)–1 is amended by:

■ 1. Revising the section heading.

■ 2. Revising the third sentence in paragraph (a) and adding three new sentences at the end.

■ 3. Revising paragraphs (b)(4)(i) and (ii), and (b)(6).

■ 4. In the second sentence of paragraph (b)(16)(i), removing the language ''An entity'' and adding the language ''Other than an entity described in paragraph (b)(4)(i)(B)(*2*) of this section, an entity'' in its place.

■ 5. In paragraph (b)(20),

■ a. Adding the language ''(not less than 60 months)'' after ''time''; and

■ b. Adding the language '', as well as any prior taxable years'' after ''incurred'' at the end of the sentence.

■ 6. Adding paragraph (b)(21).

■ 7. In paragraph (c)(1)(ii), adding the language ''(including, in the case of a specified foreign tax resident that under §§ 301.7701–1 through 301.7701–3 of this chapter is disregarded as an entity separate from its owner for U.S. tax purposes, by reason of its tax owner bearing)'' after the language ''bears.''

■ 8. Redesignating paragraph (d) as paragraph (e).

■ 9. Adding paragraphs (d) and (f).

The revisions and additions read as follows:

§ 1.1503(d)–1 Definitions, special rules, and filings.

(a) * * * Paragraph (c) of this section provides rules for a domestic consenting corporation. Paragraph (d) of this section provides rules for disregarded payment losses. Paragraph (e) of this section provides relief for certain compliance failures due to reasonable cause and a signature requirement for filings. Paragraph (f) of this section provides an anti-avoidance rule.

(b) * * *

(4) * * *

(i) *In general.* The term *separate unit* means either a foreign branch separate unit or a hybrid entity separate unit.

(A) *Foreign branch separate unit.* The term *foreign branch separate unit* means either of the following that is carried on, directly or indirectly, by a domestic corporation (including a dual resident corporation):

(*1*) 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).

(*2*) A place of business (including a deemed place of business) outside the United States that is a Permanent Establishment with respect to a QDMTT or an IIR, provided that the Permanent Establishment is not otherwise described in paragraph (b)(4)(i)(A)(*1*) of this section.

(B) *Hybrid entity separate unit.* The term *hybrid entity separate unit* means either of the following that is owned, directly or indirectly, by a domestic corporation (including a dual resident corporation):

(*1*) An interest in a hybrid entity; and

(*2*) An interest in a foreign entity (other than a Tax Transparent Entity with respect to an IIR) that is not taxed as an association for Federal tax purposes and the net income or loss of which is taken into account in determining the amount of tax under an IIR, provided that the interest is not otherwise described in paragraph (b)(4)(i)(B)(*1*) of this section. See § 1.1503(d)–7(c)(3)(iii) for an example illustrating the application of this rule.

(ii) *Separate unit combination rule*—(A) *In general.* Except as otherwise provided in paragraph (b)(4)(ii)(B) of this section, 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 a hybrid entity separate unit described in paragraph (b)(4)(i)(B)(*2*) of this section) 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 described in paragraph (b)(4)(i)(B)(*1*) of this section) in the same foreign country are treated as one separate unit (combined separate unit). See § 1.1503(d)–7(c)(1) for an example illustrating the application of this paragraph (b)(4)(ii)(A). 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.

(B) *Special rules*—(*1*) *Certain dual resident corporations.* Separate units of a foreign insurance company that is a dual resident corporation under paragraph (b)(2)(ii) of this section are not combined with separate units of any other domestic corporation.

(*2*) *Location of separate units arising from a QDMTT or an IIR.* For purposes of paragraph (b)(4)(ii)(A) of this section, a separate unit described in paragraph (b)(4)(i)(A)(*2*) or (b)(4)(i)(B)(*2*) of this section is located in the country in which it is located for purposes of the relevant QDMTT or IIR. If such place of business or entity is not located in a specific jurisdiction (for example, because the entity is a stateless entity for purposes of an IIR), the individual separate unit is not combined with any other separate units. See § 1.1503(d)–7(c)(3)(iii) for an example illustrating the application of this paragraph (b)(4)(ii)(B)(*2*).

* * * * *

(6) *Tax determination*—(i) *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.

(ii) *Minimum taxes and taxes computed by reference to financial accounting principles.* For purposes of section 1503(d) and the regulations in this part issued under section 1503(d), the determination of whether a tax is an income tax is made without regard to whether the tax is intended to ensure a minimum level of taxation on income or computes income or loss by reference to financial accounting net income or loss.

* * * * *

(21) *Pillar Two terminology.* Qualified Domestic Minimum Top-up Tax (QDMTT), Income Inclusion Rule (IIR), and any other capitalized terms that are used in connection with or are otherwise relevant to a minimum tax based on a QDMTT or IIR have the same meaning ascribed to such terms under the material listed in paragraphs (b)(21)(i) through (iii) of this section. These materials are incorporated by reference into §§ 1.1503(d)–1 through 1.1503(d)–8 with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. This material is available for inspection at the IRS and at the National Archives and Records Administration (NARA). Contact the IRS at: IRS FOIA Request, Headquarters Disclosure Office, CL:GLD:D, 1111 Constitution Avenue NW, Washington, DC 20224; phone: +1 312 292 3297; website: *https://foiapublicaccessportal.for.irs.gov/app/Home.aspx.* For information on the availability of this material at NARA, email: *fr.inspection@nara.gov,* or go to: *www.archives.gov/federal-register/cfr/ibr-locations.* This material may be obtained from the Organisation for Economic Co-operation and Development (OECD) at: 2, rue André Pascal, 75016 Paris; phone: +33 1 45 24 82 00; website: *www.oecd.org/tax/beps/tax-challenges-arising-from-the-digitalisation-of-the-economy-global-anti-base-erosion-model-rules-pillar-two.htm.*

(i) OECD (2021), *Tax Challenges Arising from the Digitalisation of the Economy—Global Anti-Base Erosion Model Rules (Pillar Two): Inclusive Framework on BEPS,* OECD, Paris, December 20, 2021. (Available at *www.oecd.org/tax/beps/tax-challenges-arising-from-the-digitalisation-of-the-economy-global-anti-base-erosion-model-rules-pillar-two.htm.*)

(ii) OECD (2024), *Tax Challenges Arising from the Digitalisation of the Economy—Consolidated Commentary to the Global Anti-Base Erosion Model Rules (2023): Inclusive Framework on BEPS,* OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, April 23, 2024. (Available at *https://doi.org/10.1787/b849f926-en.*)

(iii) OECD (2024), *Tax Challenges Arising from the Digitalisation of the Economy—Administrative Guidance on the Global Anti-Base Erosion Model Rules (Pillar Two), June 2024,* OECD/G20 Inclusive Framework on BEPS, OECD, Paris, December 15, 2023. (Available at *www.oecd.org/tax.beps/administrative/guidance/global/anti-base-erosion-rules-pillar-two-june-2024.pdf.*)

* * * * *

(d) *Disregarded payment loss rules*—(1) *Consequences of consent*—(i) *In general.* As provided in § 301.7701–3(c)(4)(i) of this chapter, a domestic corporation that directly or indirectly owns interests in a specified eligible entity (as defined in § 301.7701–3(c)(4)(i) of this chapter) classified as a disregarded entity consents to be subject to the disregarded payment loss rules of this paragraph (d). Pursuant to such consent, the domestic corporation agrees that if the specified eligible entity or a foreign branch of the domestic corporation (the specified eligible entity or such a foreign branch, a *disregarded payment entity,* and the domestic corporation, a *specified domestic owner*) incurs a disregarded payment loss (other than a disregarded payment loss described in paragraph (d)(7)(iii) of this section) and a triggering event occurs with respect to the disregarded payment loss during the DPL certification period, then, for the taxable year of the specified domestic owner during which the triggering event occurs, the specified domestic owner includes in gross income the DPL inclusion amount. See § 1.1503(d)–7(c)(42) for an example illustrating the application of the disregarded payment loss rules.

(ii) *Special rule regarding dual resident corporations.* As provided in

§ 301.7701–3(c)(4)(ii) of this chapter, a dual resident corporation that directly or indirectly owns an interest in an eligible entity classified as a disregarded entity consents to be subject to the disregarded payment loss rules of this paragraph (d). Pursuant to such consent, the dual resident corporation agrees, for purposes of this paragraph (d), to be treated as a disregarded payment entity and as a specified domestic owner of such disregarded payment entity. In such a case, if the dual resident corporation has disregarded payment income or a disregarded payment loss for a foreign taxable year, then with respect to a disregarded payment loss, it generally must comply with the certification requirements of paragraph (d)(4) of this section and, upon a triggering event, include in gross income an amount equal to the DPL inclusion amount.

(2) *DPL inclusion amount*—(i) *In general.* A *DPL inclusion amount* means, with respect to a disregarded payment loss as to which a triggering event occurs during the DPL certification period, an amount equal to the disregarded payment loss (or, if applicable, the reduced amount, as described in paragraph (d)(5)(i) of this section).

(ii) *Character and source.* A DPL inclusion amount is, for U.S. tax purposes, treated as ordinary income, and characterized, including for purposes of sections 904(d) and 907, in the same manner as if the amount were interest or royalty income paid by a foreign corporation (taking into account, for example, section 904(d)(3) if such foreign corporation would be a controlled foreign corporation). For these purposes, the DPL inclusion amount is considered comprised of interest or royalty income based on the proportion of interest or royalty deductions taken into account, respectively, in computing the disregarded payment loss relative to all the deductions taken into account in computing the disregarded payment loss.

(iii) *Translation into U.S. dollars.* A DPL inclusion amount is translated into U.S. dollars (if necessary) using the yearly average exchange rate (within the meaning of § 1.987–1(c)(2)) for the taxable year of the specified domestic owner during which the triggering event occurs.

(3) *Triggering events.* An event described in paragraph (d)(3)(i) or (ii) of this section is a triggering event with respect to a disregarded payment loss of a disregarded payment entity.

(i) *Foreign use.* A foreign use of the disregarded payment loss. For this purpose, a foreign use is determined under the principles of § 1.1503(d)–3 (including the exceptions in § 1.1503(d)–3(c)), by treating the disregarded payment loss as a dual consolidated loss, treating the disregarded payment entity as a separate unit (or, in the case of a disregarded payment entity that is a dual resident corporation, by treating the disregarded payment entity as a dual resident corporation), and, in § 1.1503(d)–3(a)(1)(i) and (ii), only taking into account a person that is related to the specified domestic owner of the disregarded payment entity. Thus, for example, a foreign use of a disregarded payment loss occurs if, under a relevant foreign tax law, any portion of a deduction taken into account in computing the disregarded payment loss is made available (including by reason of a foreign consolidation regime or similar regime, or a sale, merger, or similar transaction) to offset an item of income that, for U.S. tax purposes, is an item of a foreign corporation, but only if such foreign corporation is related to the specified domestic owner of the disregarded payment entity.

(ii) *Failure to comply with certification requirements.* A failure by the specified domestic owner of the disregarded payment entity to comply with the certification requirements of paragraph (d)(4) of this section.

(4) *Certification requirements.* Except as otherwise provided in publications, forms, instructions, or other guidance, a specified domestic owner of a disregarded payment entity must satisfy the certification requirements of this paragraph (d)(4) with respect to a disregarded payment loss of the disregarded payment entity, other than a disregarded payment loss described in paragraph (d)(7)(iii) of this section. To satisfy the certification requirements, the specified domestic owner must meet the requirements in paragraphs (d)(4)(i) and (ii) of this section.

(i) For its taxable year that includes the date on which the foreign taxable year in which the disregarded payment loss is incurred ends, the specified domestic owner must attach with its timely filed tax return a certification labeled ''Initial Disregarded Payment Loss Certification,'' which must contain—

(A) The information set forth in § 1.1503(d)–6(c)(2)(ii) (determined by substituting the phrase ''disregarded payment entity'' for the phrase ''separate unit'');

(B) A statement of the amount of the disregarded payment loss; and

(C) A statement that a foreign use of the disregarded payment loss has not occurred during the DPL certification period.

(ii) During the DPL certification period, for each of its subsequent taxable years that includes a date on which a foreign taxable year ends, the specified domestic owner must attach with its timely filed tax return a certification labeled ''Annual Disregarded Payment Loss Certification'' and satisfying the requirements of this paragraph (d)(4)(ii). Certifications with respect to multiple disregarded payment losses may be combined in a single certification, but each disregarded payment loss must be separately identified. To satisfy the requirements of this paragraph (d)(4)(ii), the certification must—

(A) Identify the disregarded payment loss to which it pertains by setting forth the foreign taxable year in which the disregarded payment loss was incurred and the amount of such loss;

(B) State that there has been no foreign use of the disregarded payment loss; and

(C) Warrant that arrangements have been made to ensure that there will be no foreign use of the disregarded payment loss and that the specified domestic owner will be informed of any such foreign use.

(5) *Reduction of DPL inclusion amount in certain cases.* With respect to a disregarded payment loss as to which a triggering event occurs during the DPL certification period, the following rules apply:

(i) The *reduced amount* means the excess (if any) of the disregarded payment loss over the positive balance (if any) of the DPL cumulative register with respect to the disregarded payment entity, computed as of the end of the foreign taxable year during which the triggering event occurs but not taking into account the disregarded payment loss. If during a taxable year of a specified domestic owner a triggering event occurs as to multiple disregarded payment losses of a disregarded payment entity of the specified domestic owner (each such loss, a *triggered loss*), then, when computing the DPL cumulative register for purposes of determining the reduced amount with respect to a triggered loss incurred in an earlier foreign taxable year, a triggered loss incurred in a later foreign taxable year is not taken into account.

(ii) The term *DPL cumulative register* means, with respect to the disregarded payment entity, an account the balance of which is computed at the end of each foreign taxable year of the entity, and which (except as provided in paragraph (d)(5)(i) of this section) is increased by

disregarded payment income of the entity for the taxable year or decreased by a disregarded payment loss of the entity for the foreign taxable year. The account balance may be positive or negative.

(iii) The reduced amount must be demonstrated to the satisfaction of the Commissioner. To so demonstrate, the specified domestic owner of the disregarded payment entity must attach a statement labeled ''Reduction of Disregarded Payment Loss Amount'' to the income tax return for the taxable year in which the triggering event occurs and provide any other information as requested by the Commissioner. The statement must show the disregarded payment income or disregarded payment loss of the disregarded payment entity for each foreign taxable year up to and including the foreign taxable year during which the triggering event occurs.

(6) *Definitions.* The following definitions apply for purposes of this paragraph (d).

(i) The term *disregarded payment entity* has the meaning set forth in paragraph (d)(1)(i) of this section, and includes a dual resident corporation treated as a disregarded payment entity pursuant to paragraph (d)(1)(ii) of this section.

(ii) The terms *disregarded payment income* and *disregarded payment loss* have the meanings set forth in this paragraph (d)(6)(ii). For purposes of computing the disregarded payment income or disregarded payment loss of a disregarded payment entity, an item is taken into account only if it gives rise to income or a deduction under the relevant foreign tax law during a period in which an interest in the disregarded payment entity is a separate unit (or the disregarded payment entity is a dual resident corporation); for purposes of allocating an item to a period, the principles of § 1.1502–76(b) apply. Items taken into account in computing disregarded payment income or disregarded payment loss are calculated in the currency used to determine tax under the relevant foreign tax law.

(A) *Disregarded payment income.* Disregarded payment income means, with respect to a disregarded payment entity and a foreign taxable year of the entity, the excess (if any) of the sum of the items described in paragraph (d)(6)(ii)(D) of this section over the sum of the items described in paragraph (d)(6)(ii)(C) of this section.

(B) *Disregarded payment loss.* Disregarded payment loss means, with respect to a disregarded payment entity and a foreign taxable year of the entity, the excess (if any) of the sum of the items described in paragraph (d)(6)(ii)(C) of this section over the sum of the items described in paragraph (d)(6)(ii)(D) of this section.

(C) *Items of deduction.* With respect to a disregarded payment entity and a foreign taxable year of the entity, an item is described in this paragraph (d)(6)(ii)(C) to the extent that it satisfies the requirements set forth in paragraphs (d)(6)(ii)(C)(*1*) through (*3*) of this section. In addition, an item is described in this paragraph (d)(6)(ii)(C) if, under the relevant foreign tax law, it is a deduction with respect to equity (including deemed equity) allowed to the entity in such taxable year (for example, a notional interest deduction) or a deduction for an imputed interest payment with respect to a debt instrument (such as a deduction for an imputed interest payment with respect to an interest-free loan).

(*1*) Under the relevant foreign tax law, the entity is allowed a deduction in such taxable year for the item.

(*2*) The payment, accrual, or other transaction giving rise to the item is disregarded for U.S. tax purposes as a transaction between a disregarded entity and its tax owner (for example, a payment by a disregarded entity to its tax owner or to another disregarded entity held by its tax owner, or a payment from a dual resident corporation to its disregarded entity) or as a transaction between a foreign branch and its home office (for example, a payment attributable to a foreign branch to a disregarded entity of its home office).

(*3*) If the payment, accrual, or other transaction were regarded for U.S. tax purposes, it would be interest, a structured payment, or a royalty within the meaning of § 1.267A–5(a)(12), (b)(5)(ii), or (a)(16), respectively.

(D) *Items of income.* With respect to a disregarded payment entity and a foreign taxable year of the entity, an item is described in this paragraph (d)(6)(ii)(D) to the extent that it satisfies the requirements set forth in paragraphs (d)(6)(ii)(D)(*1*) through (*3*) of this section.

(*1*) Under the relevant foreign tax law, the entity includes the item in income in such taxable year.

(*2*) The payment, accrual, or other transaction giving rise to the item is disregarded for U.S. tax purposes as a transaction between a disregarded entity and its tax owner (for example, because it is a payment to a disregarded entity from the disregarded entity's tax owner or from another disregarded entity held by its tax owner, or a payment to a dual resident corporation from its disregarded entity) or as a transaction between a foreign branch and its home office (for example, a payment to a foreign branch by a disregarded entity of its home office).

(*3*) If the payment, accrual, or other transaction were regarded for U.S. tax purposes, it would be interest, a structured payment, or a royalty with the meaning of § 1.267A–5(a)(12), (b)(5)(ii), or (a)(16), respectively.

(iii) The term *DPL certification period* includes, with respect to a disregarded payment loss, the foreign taxable year in which the disregarded payment loss is incurred, any prior foreign taxable years, and, except as provided in paragraph (d)(7)(iv) of this section, the 60-month period following the foreign taxable year in which the disregarded payment loss is incurred.

(iv) The term *foreign branch* means a branch (within the meaning of § 1.267A–5(a)(2)) that gives rise to a taxable presence under the tax law of the foreign country where the branch is located.

(v) The term *foreign taxable year* means, with respect to a disregarded payment entity, the entity's taxable year for purposes of a relevant foreign tax law.

(vi) The term *related* has the meaning provided in this paragraph (d)(6)(vi). A person is related to a specified domestic owner if the person is a related person within the meaning of section 954(d)(3) and the regulations thereunder, determined by treating the specified domestic owner as the ''controlled foreign corporation'' referred to in that section.

(vii) The term *relevant foreign tax law* means, with respect to a disregarded payment entity, any tax law of a foreign country of which the entity is a tax resident (within the meaning of § 1.267A–5(a)(23)(i)) or, in the case of a disregarded payment entity that is a foreign branch, the tax law of the foreign country where the branch is located.

(viii) The term *specified domestic owner* has the meaning provided in paragraph (d)(1)(i) of this section, and includes a dual resident corporation treated as a specified domestic owner pursuant to paragraph (d)(1)(ii) of this section and any successor to the corporation described in either of those paragraphs.

(7) *Special rules*—(i) *Disregarded payment entity combination rule.* For purposes of this paragraph (d), disregarded payment entities for which the relevant foreign tax law is the same (for example, because the entities are tax residents of the same foreign country) are combined and treated as a combined disregarded payment entity under the principles of paragraph (b)(4)(ii) of this

section, provided that the entities have the same foreign taxable year and are owned either by the same specified domestic owner or by specified domestic owners that are members of the same consolidated group. However, this paragraph (d)(7)(i) does not apply with respect to a dual resident corporation treated as a disregarded payment entity pursuant to paragraph (d)(1)(ii) of this section. In determining the disregarded payment income or disregarded payment loss of a combined disregarded payment entity, the principles of § 1.1503(d)–5(c)(4)(ii) apply. Thus, for example, if multiple individual disregarded payment entities are treated as a combined disregarded payment entity pursuant to this paragraph (d)(7)(i), then the combined disregarded payment entity has either a single amount of disregarded payment income or a single amount of disregarded payment loss.

(ii) *Partial ownership of disregarded payment entity.* If a specified domestic owner of a disregarded payment entity indirectly owns less than all the interests in the entity (for example, if the specified domestic owner and another person are partners in a partnership that owns all the interests in the entity), then the rules of this paragraph (d) are applied on a proportionate basis as to the specified domestic owner, based on the percentage of interests (by value) of the disregarded payment entity that the specified domestic owner directly or indirectly owns. In such a case, as to the specified domestic owner, only a proportionate share of the disregarded payment entity's items of deduction or income are taken into account in computing disregarded payment income or disregarded payment loss of the entity. In addition, with respect to the disregarded payment loss as so computed, the specified domestic owner generally must comply with the certification requirements of paragraph (d)(4) of this section and, upon a triggering event, directly include in gross income an amount equal to the DPL inclusion amount.

(iii) *Termination of DPL certification period.* With respect to a disregarded payment loss of a disregarded payment entity, the DPL certification period does not include any date after the end of the specified domestic owner's taxable year during which the specified domestic owner, or a person related to the specified domestic owner, no longer holds directly or indirectly any of the interests in, or, in the case of a disregarded payment entity that is a foreign branch, substantially all of the assets of the foreign branch. In such a case, the specified domestic owner ceases to be subject to the rules of paragraph (d)(1) of this section with respect to the disregarded payment loss; thus, for example, beyond the end of such taxable year the specified domestic owner is not subject to the certification requirements of paragraph (d)(4)(ii) of this section with respect to the loss, and will not be required to include in gross income the DPL inclusion amount with respect to such loss.

(iv) *Common parent as agent for specified domestic owner.* If a specified domestic owner is a member, but not the common parent, of a consolidated group, then the common parent is the agent of the specified domestic owner under § 1.1502–77(a)(1). Thus, for example, the common parent must attach to its tax return any certification or statement required or permitted to be filed pursuant to this paragraph (d), and references in this paragraph (d) to a timely-filed tax return of the specified domestic owner include a timely-filed tax return of the consolidated group.

(v) *Coordination with foreign hybrid mismatch rules.* Whether a disregarded payment entity is allowed a deduction under a relevant foreign tax law is determined with regard to hybrid mismatch rules, if any, under the relevant foreign tax law. Thus, for example, if a relevant foreign tax law denies a deduction for an item to prevent a deduction/no-inclusion outcome (that is, a payment that is deductible for the payer jurisdiction and is not included in the ordinary income of the payee), the item is not taken into account for purposes of computing the amount of disregarded payment income or disregarded payment loss. For this purpose, the term *hybrid mismatch rules* has the meaning provided in § 1.267A–5(b)(10).

(vi) *DPL inclusion amount not taken into account for dual consolidated loss purposes.* A DPL inclusion amount included in the gross income of a dual resident corporation or a domestic owner of a separate unit is not taken into account for purposes of determining the income or dual consolidated loss of the dual resident corporation, or the income or dual consolidated loss attributable to the separate unit, under § 1.1503(d)–5(b) or (c).

* * * * *

(f) *Anti-avoidance rule.* If a transaction, series of transactions, plan, or arrangement is engaged in with a view to avoid the purposes of section 1503(d) and the regulations in this part issued under section 1503(d), then appropriate adjustments will be made. A transaction, series of transactions, plan, or arrangement (including an arrangement to reflect, or not reflect, items on books and records) engaged in with a view to avoid the purposes of section 1503(d) and the regulations issued in this part under section 1503(d) includes one engaged in with a view to reduce or eliminate a dual consolidated loss or a disregarded payment loss while putting an item of deduction or loss that composes (or would compose) the dual consolidated loss or disregarded payment loss to a foreign use (determined under § 1.1503(d)–3 or the principles thereof). Such appropriate adjustments may include adjustments to disregard the transaction, series of transactions, plan, or arrangement, or adjustments to modify the items that are taken into account for purposes of determining the income or dual consolidated loss of or attributable to a dual resident corporation or a separate unit, or for purposes of determining income or loss of an interest in a transparent entity under § 1.1503(d)–5. See § 1.1503(d)–7(c)(43) for an example illustrating the application of this paragraph (f).

* * * * *

■ **Par. 4.** Section 1.1503(d)–3 is amended by:

■ 1. In paragraph (c)(1), removing the language ''Paragraphs (c)(2) through (9)'' and adding the language ''Paragraphs (c)(2) through (10)'' in its place.

■ 2. Redesignating paragraph (c)(9) as paragraph (c)(10) and adding a new paragraph (c)(9).

The addition reads as follows:

§ 1.1503(d)–3 Foreign use.

* * * * *

(c) * * *

(9) *Qualification for Transitional CbCR Safe Harbour.* This paragraph (c)(9) applies with respect to a dual consolidated loss incurred in a taxable year in a Tested Jurisdiction where the Transitional CbCR Safe Harbour is satisfied (such that the Jurisdictional Top-up Tax in that jurisdiction is deemed to be zero for that taxable year), and no foreign use occurs with respect to the Transitional CbCR Safe Harbour due to the application of rules addressing Duplicate Loss Arrangements. In such a case, no foreign use is considered to occur with respect to that dual consolidated loss solely because any portion of the deductions or losses that compose the dual consolidated loss is taken into account in determining the Net GloBE Income in that jurisdiction for that taxable year. See § 1.1503(d)–7(c)(3)(ii)(C) for an

example illustrating the application of this paragraph (c)(9).

* * * * *

■ **Par. 5.** Section 1.1503(d)–5 is amended by:

■ 1. In paragraph (b)(1):

■ a. Adding the language ''(including the special rules under § 1.1502–13(j)(10) concerning the treatment of intercompany (or corresponding) items (as defined in § 1.1502–13(b)(2) and (3))'' in the second sentence after the language ''1502.''

■ b. Adding a sentence after the second sentence.

■ 2. Removing the language ''the following shall not be taken into account—'' from the introductory text of paragraph (b)(2) and adding the language ''any item described in paragraphs (b)(2)(i) through (iv) is not taken into account.'' in its place.

■ 3. Revising paragraphs (b)(2)(i) through (iii).

■ 4. Adding paragraph (b)(2)(iv).

■ 5. In paragraph (c)(1)(i):

■ a. Adding the language ''(including the special rules under § 1.1502–13(j)(10) concerning the treatment of intercompany (or corresponding) items (as defined in § 1.1502–13(b)(2) and (3)) attributable to a separate unit'' in the second sentence after the language ''1502.''

■ b. Adding a sentence after the second sentence.

■ 6. Adding two sentences after the third sentence of paragraph (c)(3)(i).

■ 7. Revising paragraph (c)(4)(iv).

The revisions and additions read as follows:

§ 1.1503(d)–5 Attribution of items and basis adjustments.

* * * * *

(b) * * *

(1) * * * For examples illustrating the interaction of the intercompany transaction rules in § 1.1502–13 with the dual consolidated loss rules, see § 1.1502–13(j)(15)(x) and (xi). * * *

(2) * * *

(i) *Net capital loss.* An item described in this paragraph (b)(2)(i) is any net capital loss of the dual resident corporation.

(ii) *Carryover or carryback loss.* An item described in this paragraph (b)(2)(ii) is any carryover or carryback loss.

(iii) *Item attributable to a separate unit or transparent entity.* An item described in this paragraph (b)(2)(iii) is any item of income, gain, deduction, or loss that is attributable to a separate unit or an interest in a transparent entity of the dual resident corporation.

(iv) *Items arising from ownership of stock*—(A) *In general.* Except as provided in paragraph (b)(2)(iv)(B) of this section, an item described in this paragraph (b)(2)(iv)(A) is an amount that the dual resident corporation takes into account in its gross income as a result of ownership of stock in a corporation (including as a result of a sale or other disposition), as well as any deduction or loss with respect to such amount. Thus, for example (and except as provided in paragraph (b)(2)(iv)(B) of this section), an item described in this paragraph (b)(2)(iv)(A) includes gain recognized on the sale or exchange of stock, a dividend (including an amount under section 78), a deduction allowed under section 245A(a) with respect to a dividend, an amount included in gross income under section 951 or 951A, foreign currency gain or loss under section 986(c), and a deduction allowed under section 250(a)(1)(B) with respect to an inclusion under section 951A.

(B) *Exception for portfolio stock.* Paragraph (b)(2)(iv)(A) of this section does not apply to a dividend received by the dual resident corporation from a corporation, any other amount that the dual resident corporation includes in its gross income as a result of ownership of stock in a corporation, or any deduction with respect to either such amount, if the dual resident corporation owns less than ten percent of the sum of the value of all classes of stock of the corporation. For purposes of the preceding sentence, the percentage of stock owned by the dual resident corporation is determined as of the beginning of the taxable year of the dual resident corporation in which it receives the dividend, includes in gross income another amount as a result of ownership of stock, or claims a deduction with respect to the dividend or inclusion in gross income, and by applying the rules of section 318(a) (except that in applying section 318(a)(2)(C), the phrase ''ten percent'' is used instead of the phrase ''50 percent'').

(c) * * *

(1) * * *

(i) * * * For examples illustrating the interaction of the intercompany transaction rules in § 1.1502–13 with the dual consolidated loss rules, see § 1.1502–13(j)(15)(x) and (xi). * * *

* * * * *

(3) * * *

(i) * * * For this purpose, an adjustment to conform to U.S. tax principles does not include the attribution to a hybrid entity separate unit or an interest in a transparent entity of any items that have not and will not be reflected on the books and records of the hybrid entity or transparent entity; for example, items that are reflected on the books and records of the domestic owner cannot be attributed to a hybrid entity separate unit or an interest in a transparent entity as a result of disregarded payments made between the domestic owner and the hybrid entity or transparent entity. See § 1.1503(d)–5(c)(1)(ii) (providing that items reflected on the books and records of the hybrid entity or transparent entity are eliminated if they are otherwise disregarded for U.S. tax purposes). See also § 1.1503(d)–7(c)(6) and (c)(23) through (25) for examples illustrating the application of this paragraph (c)(3)(i). * * *

(4) * * *

(iv) *Items arising from ownership of stock*—(A) *In general.* Except as provided in paragraph (c)(4)(iv)(B) of this section, for purposes of determining the items of income, gain, deduction, and loss of a domestic owner that are attributable to a separate unit or an interest in a transparent entity, any amount that the domestic owner includes in gross income as a result of ownership of stock in a corporation (including as a result of a sale or other disposition), as well as any deduction or loss with respect to such an amount, is not taken into account. Thus, for example (and except as provided in paragraph (c)(4)(iv)(B) of this section), gain recognized by a domestic owner on the sale or exchange of stock is not attributable to a separate unit of the domestic owner; in addition, neither a dividend received by a domestic owner (including an amount under section 78), nor any deduction allowed under section 245A(a) with respect to a dividend, is attributable to a separate unit of the domestic owner; further, neither an amount included in gross income by a domestic owner under section 951 or 951A, foreign currency gain or loss under section 986(c), nor any deduction under section 250(a)(1)(B) with respect to an inclusion under section 951A, is attributable to a separate unit of the domestic owner. See § 1.1503(d)–7(c)(24) for an example illustrating the application of this paragraph (c)(4)(iv)(A).

(B) *Exception for portfolio stock.* Paragraph (c)(4)(iv)(A) of this section does not apply to a dividend received by a domestic owner from a corporation, any other amount that is included in gross income by the domestic owner as a result of ownership of stock in a corporation, or any deduction with respect to either such amount, if the domestic owner owns less than ten percent of the sum of the value of all classes of stock of the corporation. For purposes of the preceding sentence, the percentage of stock owned by the

domestic owner is determined as of the beginning of the taxable year of the domestic owner in which it receives the dividend or includes in gross income the other amount, and by applying the rules of section 318(a) (except that in applying section 318(a)(2)(C), the phrase ''ten percent'' is used instead of the phrase ''50 percent'').

(C) *Additional rules for portfolio stock.* For purposes of determining the items of income, gain, deduction, and loss of a domestic owner that are attributable to a separate unit or an interest in a transparent entity—

(*1*) The amount of a dividend described in paragraph (c)(4)(iv)(B) of this section that is taken into account is equal to the amount of the dividend less the amount of any deduction with respect to the dividend; and

(*2*) Any other amount described in paragraph (c)(4)(iv)(B) of this section is taken into account if an actual dividend from the corporation described in paragraph (c)(4)(iv)(B) of this section would be attributable to the separate unit or interest in the transparent entity.

* * * * *

§ 1.1503(d)–6 [Amended]

■ **Par. 6.** Section 1.1503(d)–6 is amended by:

■ 1. In paragraph (d)(2):

■ a. Removing the language ''there is a triggering event in the year the dual consolidated loss is incurred'' in the paragraph heading and adding the language ''a triggering event has occurred'' in its place; and

■ b. Adding the language ''or before'' immediately before the language ''such taxable year'' in the first sentence.

■ **Par. 7.** Section 1.1503(d)–7 is amended by:

■ 1. Adding paragraph (b)(16).

■ 2. Revising and republishing paragraph (c)(3).

■ 3. Adding a sentence after the first sentence in paragraph (c)(6)(iii)(B).

■ 4. In paragraph (c)(18)(iii):

■ a. Removing the language ''the Country X mirror legislation'' from the first sentence and adding the language ''instead of Country X mirror legislation, Country X law'' in its place.

■ b. Removing the language ''mirror legislation'' from the third sentence and adding the language ''law'' in its place.

■ c. Removing the language ''§ 1.1503(d)–(4)(e)'' from the last sentence and adding the language ''§ 1.1503(d)–(3)(e)'' in its place.

■ 5. Adding paragraph (c)(18)(iv).

■ 6. Adding a sentence after the third sentence in paragraph (c)(23)(ii).

■ 7. Adding paragraph (c)(23)(iii).

■ 8. Adding the language ''not'' before the language ''attributable'' in the paragraph (c)(24) heading.

■ 9. In paragraph (c)(24)(i):

■ a. Removing the language ''(or related section 78 gross-up)'' from the fourth sentence.

■ b. Revising the fifth sentence.

■ c. Removing the last sentence.

■ 10. In paragraph (c)(24)(ii), revising the first sentence and removing the second, fifth, and sixth sentences.

■ 11. In paragraph (c)(25)(ii)(B), adding a sentence after the fifth sentence.

■ 12. In paragraph (c)(26)(i), removing the language from the fifth sentence ''all of the interests'' and adding the language ''90 percent of the interests'' in its place.

■ 13. Adding paragraphs (c)(42) and (43).

The revisions and additions read as follows:

§ 1.1503(d)–7 Examples.

* * * * *

(b) * * *

(16) No country imposes a tax collected under either a Qualified Domestic Minimum Top-up Tax, IIR, or UTPR.

(c) * * *

(3) *Domestic use limitation and certain top-up taxes*—(i) *Example 3. Domestic use limitation—foreign branch separate unit owned through a partnership*—(A) *Facts.* P and S organize a partnership, PRSX, under the laws of Country X. PRSX is treated as a partnership for both U.S. and Country X tax purposes. PRSX owns FBX. PRSX earns U.S. source income that is unconnected with its FBX branch operations, and such income is not subject to tax by Country X. In addition, such U.S. source income is not attributable to FBX under § 1.1503(d)–5.

(B) *Result.* Under § 1.1503(d)–1(b)(4)(i)(A), P's and S's shares of FBX owned indirectly through their interests in PRSX are individual foreign branch separate units. Pursuant to § 1.1503(b)–1(b)(4)(ii), these individual separate units are combined and treated as a single separate unit of the consolidated group of which P is the parent. Unless an exception under § 1.1503(d)–6 applies, any dual consolidated loss attributable to FBX cannot offset income of P or S (other than income attributable to FBX, subject to the application of § 1.1503(d)–4(c)), including their distributive share of the U.S. source income earned through their interests in PRSX, nor can it offset income of any other domestic affiliates.

(ii) *Example 3A. QDMTT*—(A) *Facts.* P owns DE1X. DE1X owns FSX. Effective January 1, 2025, Country X imposes a Qualified Domestic Minimum Top-up Tax (Country X QDMTT). The Country X QDMTT is a foreign income tax for purposes of section 1503(d) and the regulations thereunder. Other than the Country X QDMTT, Country X does not impose an income tax on Country X entities. For the taxable year and Fiscal Year ending December 31, 2025, DE1X incurs a $100x deduction for interest expense. The $100x of interest expense is reflected on the books and records of DE1X and is taken into account to determine the amount of income or loss for purposes of the Country X QDMTT. If the $100x expense were deducted by P in determining U.S. taxable income, the loan and $100x of interest expense thereon would be a Duplicate Loss Arrangement under the Transitional CbCR Safe Harbour for the Country X QDMTT (Safe Harbour) and, as a result of Country X's rules for Duplicate Loss Arrangements (Country X DLA rules), the $100x of interest expense would be excluded from Country X's Profit (Loss) before Income Tax (PBT) for purposes of the Safe Harbour calculation. If the $100x of interest expense were taken into account in determining whether the Safe Harbour is satisfied (that is, if it were not excluded from PBT by the Country X DLA rules), the Safe Harbour would be satisfied; if it were not so taken into account, the Safe Harbour would not be satisfied. Because the Country X DLA rules apply only for purposes of the Safe Harbour, in all cases the $100x of interest expense would be taken into account in determining Net GloBE Income under the Country X QDMTT for the 2025 Fiscal Year.

(B) *Result*—(*1*) *General application to QDMTT.* Because DE1X is not taxable as an association for U.S. tax purposes and is subject to a foreign income tax (that is, the Country X QDMTT), DE1X is a hybrid entity, P's interest in DE1X is a hybrid entity separate unit, and the $100x interest expense deduction gives rise to a $100x dual consolidated loss attributable to P's interest in DE1X. See § 1.1503(d)–1(b)(3), (b)(4)(i)(B)(*1*) and (b)(5)(ii). Unless an exception applies, the $100x dual consolidated loss is subject to the domestic use limitation under § 1.1503(d)–4(b). The result would be the same if, in addition to the Country X QDMTT, Country X imposed another income tax on Country X entities and, under the laws of that income tax, the loss of DE1X is not available to offset or reduce items of income or gain of FSX without an election, and no such election is made.

(*2*) *Ability to make a domestic use election.* P cannot make a domestic use election with respect to the $100x dual consolidated loss if there is a foreign use of the dual consolidated loss in the year in which it was incurred (or in any prior

year). § 1.1503(d)–6(d)(2). Thus, to determine whether a domestic use election can be made it must first be determined whether the dual consolidated loss has been or will be put to a foreign use under the Country X QDMTT, including whether it would be put to a foreign use if a domestic use election were made. If a domestic use election were made, such that the dual consolidated loss could be deducted by P in determining its taxable income for U.S. tax purposes, then the Country X DLA rules would apply and prevent the $100x expense from being taken into account for purposes of the Safe Harbour. As a result, the $100x loss would not be put to a foreign use under the Safe Harbour, and the Safe Harbour would not be satisfied. Accordingly, it must also be determined whether the dual consolidated loss would be put to a foreign use under a full application of the Country X QDMTT rules. Since the Country X DLA rules only apply for purposes of the Safe Harbour, the $100x expense would be taken into account in determining the Country X Net GloBE Income under a full application of the Country X QDMTT rules and, because the $100x interest expense would thus be made available to offset or reduce items of income or gain of FSX, the $100x dual consolidated loss would be put to a foreign use and a domestic use election cannot be made.

(C) *Alternative facts.* The facts are the same as in paragraph (c)(3)(ii)(A) of this section, except that even though the DLA Rules would exclude the $100x of interest expense from Country X's PBT if a domestic use election were made, the Safe Harbour is nevertheless satisfied and, as a result, the Jurisdictional Top-up Tax under a full application of the Country X QDMTT rules is deemed to be zero. The result is the same as set forth in paragraph (c)(3)(ii)(B) of this section, except that because the Safe Harbour for Country X is satisfied (and no foreign use occurs pursuant to the application of the Safe Harbour due to the Country X DLA rules), no foreign use is considered to occur with respect to the $100x dual consolidated loss solely as a result of it being taken into account in determining the Net GloBE Income in Country X. See § 1.1503(d)–3(c)(9). Accordingly, P can make a domestic use election for the $100x dual consolidated loss attributable to its interest in DE1X.

(iii) *Example 3B. IIR*—(A) *Facts.* P owns DE3Y. DE3Y owns DE1X, S, USLLC, FLLC, and a 90 percent interest in PRS. For U.S. tax purposes: S is a domestic corporation; USLLC is a domestic entity that is disregarded as an entity separate from its owner; FLLC is a foreign entity that is disregarded as an entity separate from its owner; and PRS is a domestic partnership. FLLC is not subject to an income tax in a foreign country. Country X does not impose an income tax on Country X entities. Effective January 1, 2025, Country Y imposes an IIR (Country Y IIR). The Country Y IIR is an income tax for purposes of section 1503(d) and the regulations thereunder. For purposes of the Country Y IIR: DE1X is not a Flow-through Entity or a Tax Transparent Entity and is located in Country X; each of USLLC and FLLC is a Flow-through Entity, a Reverse Hybrid Entity and a Stateless Constituent Entity; and PRS is a Flow-through Entity and a Tax Transparent Entity.

(B) *Analysis*—(*1*) *DE1X and FLLC.* Neither DE1X nor FLLC is subject to a foreign income tax on their worldwide income or on a residence basis, and thus neither DE1X nor FLLC is a hybrid entity (within the meaning of § 1.1503(d)–1(b)(3)). However, the income or loss of each of DE1X and FLLC is taken into account in determining the amount of tax under the Country Y IIR and each of DE1X and FLLC is a foreign entity other than a Tax Transparent Entity for purposes of the Country Y IIR. As such, P's indirect interest in each of DE1X and FLLC is a hybrid entity separate unit (within the meaning of § 1.1503(d)–1(b)(4)(i)(B)(*2*)). Because DE1X is located in Country X for purposes of the Country Y IIR, the DE1X separate unit would form part of a combined separate unit including any other individual Country X separate units. See § 1.1503(d)–1(b)(4)(ii)(A) and (b)(4)(ii)(B)(*2*). Because FLLC is a Stateless Constituent Entity and thus not located in a specific jurisdiction for purposes of the Country Y IIR, the FLLC separate unit cannot be combined with any individual separate unit. See § 1.1503(d)–1(b)(4)(ii)(B)(*2*).

(*2*) *S and USLLC.* Neither S nor USLLC is subject to a foreign income tax on their worldwide income or on a residence basis, even though the income or loss of S and USLLC is taken into account in determining the amount of tax under the Country Y IIR. As a result, S is not a dual resident corporation (within the meaning of § 1.1503(d)–1(b)(2)) and USLLC is not a hybrid entity (within the meaning of § 1.1503(d)–1(b)(3)). Further, because USLLC is a domestic entity, P's interest in USLLC is not a hybrid entity separate unit within the meaning of § 1.1503(d)–1(b)(4)(i)(B)(*2*). Finally, USLLC is a transparent entity (within the meaning of § 1.1503(d)–1(b)(16)) with respect to the DE3Y separate unit because it is not taxable as an association for Federal tax purposes, is not subject to an income tax in a foreign country, and is not a pass-through entity under the laws of Country Y (the applicable foreign country).

(*3*) *PRS.* PRS is a Tax Transparent Entity for purposes of the Country Y IIR because it is fiscally transparent in the United States and is not tax resident in any foreign jurisdiction. PRS is not a hybrid entity (within the meaning of § 1.1503(d)–1(b)(3)), and P's indirect interest in PRS is not a hybrid entity separate unit within the meaning of § 1.1503(d)–1(b)(4)(i)(B)(*1*)) because PRS is not subject to a foreign tax on its worldwide income or on a residence basis. Further, P's indirect interest in PRS is not a hybrid entity separate unit within the meaning of § 1.1503(d)–1(b)(4)(i)(B)(*2*), even though the income or loss of PRS is taken into account in determining the amount of tax under the Country Y IIR, because PRS is not a foreign entity. PRS is also not a transparent entity (within the meaning of § 1.1503(d)–1(b)(16)) with respect to the DE3Y separate unit because, as a Tax Transparent Entity, it is a pass-through entity under the laws of Country Y (the applicable foreign country). The result would be the same if, instead of PRS being a domestic entity, PRS were a foreign entity (P's indirect interest in PRS would not be a separate unit in this case because PRS is a Tax Transparent Entity).

* * * * *

(6) * * *

(iii) * * *

(B) * * * But see § 1.1503(d)–1(d), which takes into account certain payments that are otherwise disregarded for purposes of section 1503(d) and the regulations thereunder. * * *

* * * * *

(18) * * *

(iv) *Alternative facts.* The facts are the same as in paragraph (c)(18)(i) of this section, except that instead of Country X mirror legislation, Country X law denies the ability to use the loss to offset income of Country X affiliates if the loss is deductible in another jurisdiction to offset income that is not dual inclusion income (for example, if a domestic use election were made with respect to FBX's dual consolidated loss and the loss became deductible by P); Country X law does not, however, deny the use of the loss of a Country X branch or permanent establishment to offset income of Country X affiliates if under the law of the other jurisdiction the loss can only offset income of the Country X branch or permanent establishment (for example, if a domestic use election is not made with respect to FBX's dual

consolidated loss and the domestic use limitation applied). Accordingly, Country X law does not deny any opportunity for the foreign use of the dual consolidated loss and, therefore, is not mirror legislation (within the meaning of § 1.1503(d)–3(e)(1)).

* * * * *

(23) * * *

(ii) * * * But see § 1.1503(d)–1(d), which takes into account certain payments that are otherwise disregarded for purposes of section 1503(d) and the regulations thereunder. * * *

(iii) *Alternative facts.* The facts are the same as in paragraph (c)(23)(i) of this section, except that P borrows from DE1X (instead of from a third party) and P on-lends the proceeds to a third party (instead of to DE1X). In addition, in year 1, P earns interest income attributable to the third-party loan. Also in year 1, DE1X earns $40x of interest income on its loan to P (which is generally disregarded for U.S. tax purposes) and DE1X incurs an unrelated $30x deduction for salary expense (which is regarded). The loan from DE1X to P, the disregarded interest income, and the regarded salary expense are reflected on the books and records of DE1X. The third-party loan and related interest income have not and will not be reflected on the books and records of DE1X because they are reflected on the books and records of P. Because the interest income on P's third-party loan is not reflected on the books and records of DE1X, no portion of such income is attributable to P's interest in DE1X pursuant to § 1.1503(d)–5(c)(3) for purposes of calculating the year 1 income or dual consolidated loss attributable to such interest. Adjustments of DE1X's books and records to conform to U.S. tax principles do not result in the attribution of any portion of the third-party interest income, or any other item reflected on the books and records of P, to P's interest in DE1X because such item has not and will not be reflected on DE1X's books and records. See § 1.1503(d)–5(c)(3)(i). Further, even though the disregarded interest income is reflected on the books and records of DE1X, it is not taken into account for purposes of calculating income or a dual consolidated loss. See § 1.1503(d)–5(c)(1)(ii). But see § 1.1503(d)–1(d), which takes into account certain payments that are otherwise disregarded for purposes of section 1503(d) and the regulations thereunder. The $30x deduction for the salary expense is reflected on DE1X's books and records and, thus, there is a $30x dual consolidated loss attributable to P's interest in DE1X in year 1.

(24) * * *

(i) * * * In year 1, FSX distributes $50x to DE3Y, the entire amount of which is a dividend for U.S. tax purposes and is included in gross income by P. * * *

(ii) Pursuant to § 1.1503(d)–5(c)(4)(iv)(A), neither the $50x dividend nor any deduction or loss with respect to the dividend (for example, a deduction allowed to P under section 245A(a)) is taken into account for purposes of determining the items of income, gain, deduction, and loss of P that are attributable to P's interest in DE3Y; thus, regardless of whether the dividend is reflected on the books and records of DE3Y, no portion of the dividend or any deduction or loss with respect to the dividend is attributable to P's interest in DE3Y. * * *

(25) * * *

(ii) * * *

(B) * * * But see § 1.1503(d)–1(d), which takes into account certain payments that are otherwise disregarded for purposes of section 1503(d) and the regulations thereunder. * * *

* * * * *

(42) *Example 42. Disregarded payment loss—inclusion in gross income of DPL inclusion amount upon occurrence of triggering event*—(i) *Facts.* P owns DE1X, and DE1X owns FSX. P owned all the interests in DE1X on the effective date of DE1X's election to be disregarded as an entity separate from its owner. In year 1, DE1X pays $100x to P pursuant to a note. For U.S. tax purposes, the payment is disregarded as a transaction between DE1X and P, but if the payment were regarded it would be interest within the meaning of § 1.267A–5(a)(12). Under Country X tax law, the $100x is interest for which DE1X is allowed a deduction in year 1. In year 1, pursuant to a Country X group relief regime, DE1X's $100x deduction is made available to offset income of FSX.

(ii) *Result.* Because P owned interests in DE1X, a specified eligible entity (as defined in § 301.7701–3(c)(4)(i) of this chapter), on the effective date of DE1X's election to be a disregarded entity, P consented to be subject to the disregarded payment loss rules of § 1.1503(d)–1(d). See § 301.7701–3(c)(4)(i) of this chapter. In addition, DE1X, a disregarded payment entity, incurs a $100x disregarded payment loss with respect to its Country X taxable year for year 1. See § 1.1503(d)–1(d)(1)(i) and (d)(6)(ii)(B). DE1X's $100x deduction being made available to offset income of FSX pursuant to the Country X group relief regime constitutes a foreign use of, and thus a triggering event with respect to, the disregarded payment loss during the DPL certification period. See § 1.1503(d)–1(d)(3)(i) and (d)(6)(iii). As a result, in year 1, P must include in gross income $100x, the DPL inclusion amount with respect to the disregarded payment loss. See § 1.1503(d)–1(d)(1)(i) and (d)(2)(i). The $100x DPL inclusion amount is treated for U.S. tax purposes as ordinary interest income, the source and character of which is determined as if P received the interest payment from a wholly owned foreign corporation. See § 1.1503(d)–1(d)(2)(ii). The result would be the same if the payment were not treated as interest (or a structured payment or a royalty) for U.S. tax purposes, if it were regarded, and the transaction, series of transactions, plan, or arrangement that gave rise to the payment was engaged in with a view to avoid the purposes of the disregarded payment loss rules under § 1.1503(d)–1(d). See § 1.1503(d)–1(f).

(43) *Example 43. Income from U.S. business operations to avoid the purposes of the dual consolidated loss rules*—(i) *Facts.* P owns DE1X. DE1X owns FSX. P conducts business operations in the United States that are expected to generate items of income or gain (U.S. business operations). With a view to avoid the purposes of section 1503(d) by eliminating what would otherwise be a dual consolidated loss, P transfers the U.S. business operations to DE1X. But for P's items of income or gain from the U.S. business operations (held indirectly through DE1X), there would be a dual consolidated loss attributable to USP's interest in DE1X and a foreign use of that dual consolidated loss (as a result of the Country X consolidation regime). For purposes of determining taxable income under the income tax laws of Country X, items of income, gain, deduction, and loss attributable to a permanent establishment (or similar taxable presence) in another country, which would include the U.S. business operations, are not taken into account.

(ii) *Result.* Because P transferred the U.S. business operations to DE1X with a view to avoid the purposes of section 1503(d), the anti-avoidance rule in § 1.1503(d)–1(f) applies. As a result, the income or gain that P takes into account from the U.S. business operations (held through DE1X) will not be taken into account for purposes of determining the amount of income or dual consolidated loss attributable to P's interest in DE1X under § 1.1503(d)–5(c). The result would be the same if, instead of the income tax laws of Country X not taking

into account the items of income, gain, deduction, and loss attributable to a permanent establishment (or similar taxable presence) in another country for purposes of determining taxable income, the income tax laws of Country X took such items into account for this purpose but provided a foreign tax credit with respect to taxes paid on such items.

* * * * *

■ **Par. 8.** Section 1.1503(d)–8 is amended by:

■ 1. Revising the section heading.

■ 2. In paragraph (b)(6):

■ a. Removing the language ''as well 1.1503(d)–3(e)(1) and (e)(3)'' in the first sentence and adding the language ''as well as 1.1503(d)–3(e)(3)'' in its place.

■ b. Removing the second sentence.

■ c. Adding a sentence at the end of the paragraph.

■ 3. Adding paragraphs (b)(9) through (16).

The revisions and additions read as follows:

§ 1.1503(d)–8 Applicability dates.

* * * * *

(b) * * *

(6) * * * The parenthetical in § 1.1503(d)–1(c)(1)(ii) applies to determinations under §§ 1.1503(d)–1 through 1.1503(d)–7 relating to taxable years ending on or after August 6, 2024.

* * * * *

(9) *Attribution of items arising from ownership of stock.* Section 1.1503(d)–5(b)(2)(iv) and (c)(4)(iv) apply to taxable years ending on or after August 6, 2024.

(10) *Adjustments to conform to U.S. tax principles.* The fourth and fifth sentences of § 1.1503(d)–5(c)(3)(i) apply to taxable years ending on or after August 6, 2024.

(11) *Disregarded payment loss rules.* Section 1.1503(d)–1(d) applies to taxable years ending on or after August 6, 2024. *See also* section 301.7701–3(c)(4)(vi) (applicability dates for consent to be subject to disregarded payment loss rules).

(12) *Transition rule for QDMTTs and Top–up Taxes*—(i) *In general.* Except as provided in paragraph (b)(12)(ii) of this section, §§ 1.1503(d)–1 through 1.1503(d)–7 apply without taking into account QDMTTs or Top-up Taxes with respect to losses incurred in taxable years beginning before August 6, 2024. Thus, for example, a foreign use is not considered to occur with respect to a dual consolidated loss incurred in a taxable year beginning before August 6, 2024 solely because all or a portion of the deductions or losses that comprise the dual consolidated loss is taken into account (including in a taxable year beginning on or after August 6, 2024) in determining the Net GloBE Income for a jurisdiction or whether the Transitional CbCR Safe Harbour applies for a jurisdiction. As an additional example, an entity is not treated as a hybrid entity in a taxable year beginning before August 6, 2024 solely because it is subject to a QDMTT.

(ii) *Anti-abuse rule.* Paragraph (b)(12)(i) of this section does not apply with respect to a loss that was incurred or increased with a view to reduce the amount of tax under a QDMTT or IIR, or to qualify for the Transitional CbCR Safe Harbour. For example, a loss may be put to a foreign use under a QDMTT where a taxpayer causes the loss to be taken into account in a taxable year beginning before August 6, 2024, with a view to reducing the amount of tax under a QDMTT in a taxable year beginning after August 6, 2024.

(13) *Foreign use exception for qualification for the Transitional CbCR Safe Harbour.* Section 1.1503(d)–3(c)(9) applies to taxable years beginning on or after August 6, 2024.

(14) *Separate units arising from a QDMTT or IIR.* Sections 1.1503(d)–1(b)(4)(i)(A)(*2*), 1.1503(d)–1(b)(4)(i)(B)(*2*), and 1.1503(d)–1(b)(4)(ii)(B)(*2*) apply to taxable years beginning on or after August 6, 2024.

(15) *Anti-avoidance rule.* Section 1.1503(d)–1(f) applies to taxable years ending on or after August 6, 2024.

(16) *Minimum taxes and taxes computed by reference to financial accounting principles.* Section 1.1503(d)–1(b)(6)(ii) applies to taxable years ending on or after August 6, 2024.

PART 301—PROCEDURE AND ADMINISTRATION

■ **Par. 9.** The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805. * * *

■ **Par. 10.** Section 301.7701–3 is amended by revising the sixth sentence of paragraph (a) and adding paragraph (c)(4) to read as follows:

§ 301.7701–3 Classification of certain business entities.

(a) * * * Paragraph (c) of this section provides rules for making express elections, including a rule under which a domestic eligible entity that elects to be classified as an association consents to be subject to the dual consolidated loss rules of section 1503(d), as well as a rule under which certain owners of certain eligible entities that are disregarded as entities separate from their owners consent to be subject to the disregarded payment loss rules of § 1.1503(d)–1(d). * * *

* * * * *

(c) * * *

(4) *Consent to be subject to disregarded payment loss rules*—(i) *General rule.* If a specified eligible entity elects to be (or is formed or acquired after August 6, 2024 and classified without an election as) disregarded as an entity separate from its owner, then a domestic corporation, if any, that on the effective date of the election (or on the date of formation or acquisition absent an election) owns directly or indirectly interests in the specified eligible entity consents to be subject to the disregarded payment loss rules of § 1.1503(d)–1(d) of this chapter. For this purpose, a *specified eligible entity* means an eligible entity (regardless of whether domestic or foreign), provided that the entity is a foreign tax resident or is owned by a domestic corporation that has a foreign branch.

(ii) *Special rule regarding dual resident corporations.* If an eligible entity elects to be disregarded as an entity separate from its owner, then a dual resident corporation, if any, that on the effective date of the election directly or indirectly owns interests in the eligible entity consents to be subject to the disregarded payment loss rules of § 1.1503(d)–1(d) of this chapter.

(iii) *Deemed consent.* This paragraph (c)(4)(iii) applies to a domestic corporation that directly or indirectly owns interests in a specified eligible entity disregarded as an entity separate from its owner, but that has not pursuant to paragraph (c)(4)(i) of this section consented to be subject to the disregarded payment loss rules of § 1.1503(d)–1(d) of this chapter. This paragraph (c)(4)(iii) also applies to a dual resident corporation that owns directly or indirectly interests in an eligible entity disregarded as an entity separate from its owner, but that has not pursuant to paragraph (c)(4)(ii) of this section consented to be subject to the disregarded payment loss rules of § 1.1503(d)–1(d) of this chapter. When this paragraph (c)(4)(iii) applies, the domestic corporation or dual resident corporation, as applicable, is deemed to consent to be subject to the disregarded payment loss rules of § 1.1503(d)–1(d) of this chapter. This deemed consent rule applies, for example, to a domestic corporation that directly or indirectly acquires interests in a pre-existing disregarded entity, and a domestic corporation that owns interests in a disregarded entity by reason of a conversion of a partnership to a

disregarded entity (provided that, in each case, the disregarded entity is a specified eligible entity). As additional examples, the deemed consent rule applies to a domestic corporation that owns interests in a disregarded entity that defaulted to such status under paragraph (b)(1)(ii) or (b)(2)(i)(C) of this section, as well as a domestic corporation that owns interests in a disregarded entity that elected such status before the applicability date relating to paragraph (c)(4)(i) of this section (provided that, in each case, the disregarded entity is a specified eligible entity).

(iv) *Election to avoid deemed consent.* The deemed consent rule of paragraph (c)(4)(iii) of this section does not apply to a domestic corporation or dual resident corporation if the eligible entity elects to be classified as an association effective before August 6, 2025. For purposes of such an election, the sixty-month limitation under paragraph (c)(1)(iv) of this section does not apply.

(v) *Definitions.* For purposes of paragraph (c)(4) of this section, the following definitions apply:

(A) The term *domestic corporation* has the meaning provided in § 1.1503(d)–1(b)(1) of this chapter.

(B) The term *dual resident corporation* has the meaning provided in § 1.1503(d)–1(b)(2) of this chapter.

(C) The term *foreign branch* means a branch (within the meaning of § 1.267A–5(a)(2) of this chapter) that gives rise to a taxable presence under the tax law of the foreign country where the branch is located.

(D) The term *foreign tax resident* means a tax resident (within the meaning of § 1.267A–5(a)(23)(i) of this chapter) of a foreign country.

(E) The term *indirectly,* when used in reference to ownership, has the same meaning as provided in § 1.1503(d)–1(b)(19) of this chapter.

(vi) *Applicability dates*—(A) *In general.* Except as provided in paragraph (c)(4)(vi)(B) of this section, paragraph (c)(4) of this section applies as of August 6, 2024, as well as in regard to any election of an eligible entity to be classified as disregarded as an entity separate from its owner filed on or after August 6, 2024 (regardless of whether the election is effective before August 6, 2024).

(B) *Special rule regarding deemed consent.* Paragraph (c)(4)(iii) of this section applies on or after August 6, 2025.

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Douglas W. O'Donnell,

Deputy Commissioner.

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