

(3) [Reserved] For further guidance, see § 1.904-5T(o)(3).

[T.D. 8214, 53 FR 27020, July 18, 1988, as amended by T.D. 8412, 57 FR 20648, May 14, 1992; T.D.8767, 63 FR 14615, Mar. 26, 1998; T.D. 8827, 64 FR 37677, July 13, 1999; T.D. 8827, 64 FR 58782, Nov. 1, 1999; T.D. 8916, 66 FR 277, Jan. 3, 2001; T.D.9141, 69 FR 43307, July 20, 2004; T.D. 9260, 71 FR 24531, Apr. 25, 2006; 71 FR 77265, Dec. 26, 2006; T.D. 9368, 72 FR 72590, Dec. 21, 2007]

**§ 1.904-5T Look-through rules as applied to controlled foreign corporations and other entities (temporary).**

(a) *Definitions.* For purposes of sections 904(d)(3) and 904(d)(4) and the regulations under section 904, the following definitions apply:

(1) The term *separate category* means, as the context requires, any category of income described in section 904(d)(1)(A), (B), (C), (D), (F), (G), (H), or (I) and in § 1.904-4(b), (d), (e), and (f), any category of income described in § 1.904-4(m), or any category of earnings and profits to which income described in such provisions is attributable.

(2) and (3) [Reserved]. For further guidance, see § 1.904-5(a)(2) and (3).

(4) The term *noncontrolled section 902 corporation* means any foreign corporation with respect to which the taxpayer meets the stock ownership requirements of section 902(a), or, with respect to a lower-tier foreign corporation, the taxpayer meets the requirements of section 902(b). Except as provided in section 902 and paragraphs (i)(3) and (i)(4) of this section, a controlled foreign corporation shall not be treated as a noncontrolled section 902 corporation with respect to any distributions out of its earnings and profits for periods during which it was a controlled foreign corporation. In the case of a partnership owning a foreign corporation, the determination of whether a taxpayer meets the ownership requirements of section 902(a) or (b) will be made with respect to the taxpayer's indirect ownership, and not the partnership's direct ownership, in the foreign corporation. See section 902(b)(7).

(b) *In general.* Except as otherwise provided in section 904(d)(3) and (4) and this section, dividends, interest, rents, and royalties received or accrued by a

taxpayer from a controlled foreign corporation in which the taxpayer is a United States shareholder shall be treated as general limitation income. See § 1.904-5T(c)(4)(iii) for the treatment of dividends received by a domestic corporation from a noncontrolled section 902 corporation in which the domestic corporation meets the stock ownership requirements of section 902(a).

(c)(1) through (c)(2)(ii) [Reserved]. For further guidance, see § 1.904-5(c)(1) through (c)(2)(ii).

(iii) *Allocating and apportioning expenses of a noncontrolled section 902 corporation.* Expenses of a noncontrolled section 902 corporation shall be allocated and apportioned in the same manner as expenses of a controlled foreign corporation under § 1.904-5(c)(2)(ii), except that the related person interest rule of § 1.904-5(c)(2)(ii)(C) and (D) shall not apply.

(c)(2)(iv) through (c)(4)(ii) [Reserved]. For further guidance, see § 1.904-5(c)(2)(iv) through (c)(4)(ii).

(iii) *Look-through rule for dividends from noncontrolled section 902 corporations.* Except as otherwise provided in this subparagraph (iii), any dividend that is distributed by a noncontrolled section 902 corporation and received or accrued by a domestic corporation that meets the stock ownership requirements of section 902(a) shall be treated as income in a separate category in proportion to the ratio of the portion of earnings and profits attributable to income in such category to the total amount of earnings and profits of the noncontrolled section 902 corporation. A dividend distributed by a noncontrolled section 902 corporation shall be treated as passive income if the look-through characterization of such dividend is not substantiated to the satisfaction of the Commissioner, or if such dividend is received or accrued by a shareholder that is neither a domestic corporation meeting the stock ownership requirements of section 902(a) nor a foreign corporation meeting the requirements of section 902(b). See § 1.904-5T(i)(4). See § 1.904-7T for transition rules concerning the treatment of undistributed earnings (or a deficit) of a noncontrolled section 902 corporation

that were accumulated in taxable years beginning before January 1, 2003.

(c)(4)(iv) through (h)(2) [Reserved] For further guidance, see § 1.904-5(c)(4)(iv) through (h)(2).

(3) *Income from the sale of a partnership interest*—(i) *In general.* To the extent a partner recognizes gain on the sale of a partnership interest, that income shall be treated as passive category income to the partner, unless the income is considered to be high-taxed under section 904(d)(2)(B)(iii)(II) and § 1.904-4(c).

(ii) *Exception for 25-percent owned partnership.* In the case of a sale of an interest in a partnership by a partner that is a 25-percent owner of the partnership under the principles of section 954(c)(4)(B), income recognized on the sale of the partnership interest shall be treated as general category income to the extent that such gain would not be classified as foreign personal holding company income under the look-through rule of section 954(c)(4).

(i) *Application of look-through rules to related entities*—(1) *In general.* Except as provided in paragraphs (i)(2), (3), and (4) of this section, the principles of this section shall apply to distributions and payments that are subject to the look-through rules of section 904(d)(3) and this section from a controlled foreign corporation or other entity otherwise entitled to look-through treatment (a “look-through entity”) under this section to a related look-through entity. A noncontrolled section 902 corporation shall be considered a look-through entity only to the extent provided in paragraph (i)(4) of this section. Two look-through entities shall be considered to be related to each other if one owns, directly or indirectly, stock possessing more than 50 percent of the total voting power of all classes of voting stock of the other entity or more than 50 percent of the total value of such entity. In addition, two look-through entities are related if the same United States shareholders own, directly or indirectly, stock possessing more than 50 percent of the total voting power of all voting classes of stock (in the case of a corporation) or more than 50 percent of the total value of each look-through entity. In the case of a corporation, value shall be deter-

mined by taking into account all classes of stock. In the case of a partnership, value shall be determined under the rules in paragraph (h)(4) of this section. For purposes of this section, indirect ownership shall be determined under section 318 and the regulations thereunder.

(2) [Reserved]. For further guidance, see § 1.904-5(i)(2).

(3) *Special rule for dividends between controlled foreign corporations.* Solely for purposes of dividend payments between controlled foreign corporations, two controlled foreign corporations shall be considered related look-through entities if the same United States shareholder owns, directly or indirectly, at least 10 percent of the total voting power of all classes of stock of each foreign corporation. If two controlled foreign corporations are not considered related look-through entities for purposes of this section because a United States shareholder does not satisfy the ownership requirement set forth in this paragraph (i)(3), the dividend payment will be characterized under the look-through rules of section 904(d)(4) and this section if the requirements set forth in paragraph (i)(4) of this section are satisfied.

(4) *Payor and recipient of dividend are members of same qualified group.* Solely for purposes of dividend payments in taxable years beginning after December 31, 2002, between controlled foreign corporations, noncontrolled section 902 corporations, or a controlled foreign corporation and a noncontrolled section 902 corporation, the payor and recipient corporations shall be considered related look-through entities if the corporations are members of the same qualified group as defined in section 902(b)(2) and the recipient corporation is eligible to compute foreign taxes deemed paid with respect to the dividend under section 902(b)(1).

(5) *Examples.* The following examples illustrate the provisions of this paragraph (i):

*Examples 1 through 3.* [Reserved]. For further guidance, see § 1.904-5(i)(5) *Examples 1 through 3.*

*Example 4.* P, a domestic corporation, owns all of the voting stock of S, a controlled foreign corporation. S owns 5 percent of the voting stock of T, a controlled foreign corporation. The remaining 95 percent of the

stock of T is owned by P. In 2006, T pays a \$50 dividend to S and a \$950 dividend to P. The dividend to S is not eligible for look-through treatment under paragraph (i)(4) of this section, and S is not eligible to compute an amount of foreign taxes deemed paid with respect to the dividend from T, because S and T are not members of the same qualified group (S owns less than 10 percent of the voting stock of T). See section 902(b) and § 1.902-1(a)(3). However, the dividend is eligible for look-through treatment under paragraph (i)(3) of this section because P owns at least 10 percent of the voting power of all classes of stock of both S and T. The dividend is subpart F income of S that is taxable to P.

*Example 5.* P, a domestic corporation, owns 50 percent of the voting stock of S, a controlled foreign corporation. S owns 10 percent of the voting stock of T, a controlled foreign corporation. The remaining 50 percent of the stock of S and the remaining 90 percent of the stock of T are owned, respectively, by X and Y. X and Y are each United States shareholders of T but are not related to P, S, or each other. In 2006, T pays a \$100 dividend to S. The dividend is not eligible for look-through treatment under paragraph (i)(3) of this section because no United States shareholder owns at least 10 percent of the voting power of all classes of stock of both S and T (P and X each own only 5 percent of T). However, the dividend is eligible for look-through treatment under paragraph (i)(4) of this section, and S is eligible to compute an amount of foreign taxes deemed paid with respect to the dividend from T, because S and T are members of the same qualified group. See section 902(b) and § 1.902-1(a)(3). The dividend is subpart F income of S that is taxable to P and X.

(j) through (l) [Reserved]. For further guidance, see § 1.904-5(j) through (l).

(m) *Application of section 904(g)—(1) In general.* This paragraph (m) applies to certain amounts derived from controlled foreign corporations and noncontrolled section 902 corporations that are treated as United States-owned foreign corporations as defined in section 904(g)(6). For purposes of determining the portion of an interest payment that is allocable to income earned or accrued by a controlled foreign corporation or noncontrolled section 902 corporation from sources within the United States under section 904(g)(3), the rules in paragraph (m)(2) of this section apply. For purposes of determining the portion of a dividend (or amount treated as a dividend, including amounts described in section 951(a)(1)(B)) paid or accrued by a con-

trolled foreign corporation or noncontrolled section 902 corporation that is treated as from sources within the United States under section 904(g)(4), the rules in paragraph (m)(4) of this section apply. For purposes of determining the portion of an amount included in gross income under section 951(a)(1)(A) that is attributable to income of the controlled foreign corporation from sources within the United States under section 904(g)(2), the rules in paragraph (m)(5) of this section apply. In order to determine whether section 904(g) applies, section 904(g)(5) (exception if a United States-owned foreign corporation has a *de minimis* amount of United States source income) shall be applied to the total amount of earnings and profits of a controlled foreign corporation or noncontrolled section 902 corporation for a taxable year without regard to the characterization of those earnings under section 904(d).

(2)(i) [Reserved]. For further guidance, see § 1.904-5(m)(2)(i).

(ii) *Interest payments from noncontrolled section 902 corporations.* If interest is received or accrued by a shareholder from a noncontrolled section 902 corporation (where the shareholder is a domestic corporation that meets the stock ownership requirements of section 902(a)), the rules of subparagraph (m)(2)(i) apply in determining the portion of the interest payment that is from sources within the United States, except that the related party interest rules of subparagraph (c)(2)(ii)(C) shall not apply.

(3) [Reserved]. For further guidance, see § 1.904-5(m)(3).

(4) *Treatment of dividend payments—(i) Rule.* Any dividend or distribution treated as a dividend under this section (including an amount included in gross income under section 951(a)(1)(B)) that is received or accrued by a United States shareholder from a controlled foreign corporation, or any dividend that is received or accrued by a domestic corporate shareholder meeting the stock ownership requirements of section 902(a) from a noncontrolled section 902 corporation, shall be treated as income in a separate category derived from sources within the United States

in proportion to the ratio of the portion of the earnings and profits of the controlled foreign corporation or non-controlled section 902 corporation in the corresponding separate category from United States sources to the total amount of earnings and profits of the controlled foreign corporation or non-controlled section 902 corporation in that separate category.

(m)(4)(ii) through (7). [Reserved]. For further guidance, see § 1.904-5(m)(4)(ii) through (7).

(n) *Order of application of sections 904(d) and (g)*. In order to apply the rules of this section, section 904(d)(1) shall first be applied to the controlled foreign corporation or noncontrolled section 902 corporation to determine the amount of income and earnings and profits derived by the controlled foreign corporation or noncontrolled section 902 corporation in each separate category. The income and earnings and profits in each separate category that are from United States sources shall then be determined. Sections 904(d)(3), 904(d)(4), and 904(g), and this section shall then be applied for purposes of characterizing and sourcing income received, accrued, or included by a United States shareholder in the controlled foreign corporation or a domestic corporate shareholder that meets the stock ownership requirements of section 902(a) with respect to a noncontrolled section 902 corporation that is attributable or allocable to income or earnings and profits of the foreign corporation.

(o)(1) [Reserved]. For further guidance, see § 1.904-5(o)(1).

(2) *Rules for noncontrolled section 902 corporations*. Except as provided in § 1.904-7T(f)(9), section 904(d)(4) and this section apply to distributions from a noncontrolled section 902 corporation that are paid during the first taxable year of the noncontrolled section 902 corporation beginning after December 31, 2002, and thereafter, without regard to whether the corresponding taxable year of the recipient of the distribution begins after December 31, 2002, except that the provisions of paragraphs (m)(1), (m)(2)(ii), (m)(4)(i), and (n) apply to distributions from a noncontrolled section 902 corporation paid in taxable years of such corporation beginning

after April 25, 2006. For corresponding rules applicable to taxable years beginning before January 1, 2003, see 26 CFR § 1.904-5 (revised as of April 1, 2006).

(3) *Rules for income from the sale of a partnership interest*—(i) *Effective/applicability date*. Paragraph (h)(3) of this section shall apply to taxable years of United States taxpayers beginning after December 31, 2006 and ending on or after December 21, 2007, and to taxable years of a foreign corporation which end with or within taxable years of its domestic corporate shareholder beginning after December 31, 2006 and ending on or after December 21, 2007.

(ii) *Expiration date*. The applicability of paragraph (h)(3) of this section expires on December 20, 2010.

[T.D. 9260, 71 FR 24531, Apr. 25, 2006, as amended by T.D. 9368, 72 FR 72590, Dec. 21, 2007]

#### § 1.904-6 Allocation and apportionment of taxes.

(a) *Allocation and apportionment of taxes to a separate category or categories of income*—(1) *In general*—(i) *Taxes related to a separate category of income*. The amount of foreign taxes paid or accrued with respect to a separate category of income (including United States source income) shall include only those taxes that are related to income in that separate category. Taxes are related to income if the income is included in the base upon which the tax is imposed. If, for example, foreign law exempts certain types of income from foreign taxes, or certain types of income are exempt from foreign tax under an income tax convention, then no taxes are considered to be related to such income for purposes of this paragraph. As another example, if foreign law provides for a specific rate of tax with respect to certain types of income (*e.g.*, capital gains), or certain expenses, deductions, or credits are allowed under foreign law only with respect to a particular type of income, then such provisions shall be taken into account in determining the amount of foreign tax imposed on such income. A withholding tax (unless it is a withholding tax that is not the final tax payable on the income as described in § 1.904-4(d)) is related to the income from which it is withheld. A tax that is