the primary benefit or value of the transaction to the customer, if it is reasonably ascertainable. However, Corp A cannot reasonably ascertain the primary benefit or value derived by a specific customer from access to Corp A's database. In such situations, § 1.861–18(b)(3)(ii) provides that the predominant character of a transaction may be determined based on the primary benefit or value to a typical customer of a substantially similar transaction. This primary benefit or value to a typical customer can be identified through actual data about use or access pursuant to § 1.861–18(b)(3)(ii)(A), or if that data is not available, by using other evidence indicative of the primary benefit or value to a typical customer pursuant to § 1.861–18(b)(3)(ii)(B). Corp A has data that shows that the typical customer views movies by streaming rather than download. Accordingly, under paragraph (c)(2) of this section, the predominant character of the transaction is a cloud transaction because the primary benefit or value a typical customer receives is access to stream movies on Corp A's website. Under paragraph (c)(1) of this section, the cloud transaction is classified as the provision of services.

(10) *Example 10: Reseller of software as a service*—(i) *Facts.* Corp A owns the copyright to software (Program S). Corp A hosts Program S on its servers. Customers access Program S only through an internet connection. Corp A grants Corp B, a foreign corporation wholly owned by Corp A, the right to sell access to Program S to Corp B's customers that are located in Corp B's country. Corp B is responsible for managing the purchase/sale interaction with Corp B's customers, including invoicing and collections. Corp A is responsible for providing customers with access to Program S. Corp B does not perform any functions to provide access to Program S.

(ii) *Analysis.* (A) The transaction between Corp A and Corp B is treated as Corp A providing on-demand access to Program S to Corp B even though Corp B resells that access. This transaction is a cloud transaction with one element. Under paragraph (c)(1) of this section, the cloud transaction is classified as the provision of services. The transaction does not involve the transfer of any copyright rights described in § 1.861–18(c)(2), and therefore is governed solely by this section.

(B) The transaction between Corp B and its customers is the provision of on-demand access to Program S by Corp B, which is a cloud transaction with one element. Under paragraph (c)(1) of this section, the cloud transaction is classified as the provision of services. The transaction does not involve the transfer of any copyright rights described in § 1.861–18(c)(2), and therefore is governed solely by this section.

(11) *Example 11: Computer game with online functionality and in-game purchases*—(i) *Facts.* Corp A owns the copyright to a computer game (Game X). Customers can purchase Game X for a one-time fee and download it onto their computers. A customer may play certain aspects of Game X while not connected to the internet, but most of the core functionality of Game X is available only when the customer is connected to the internet, including the ability to play with other customers. In order to access the additional online functionality specific to Game X, customers must pay a monthly fee to Corp A. The additional functionality of Game X is hosted on servers owned by Corp A. Customers may also pay a one-time fee to access an in-game item that can be utilized only when playing Game X online.

(ii) *Analysis.* (A) There are three transactions between Corp A and a customer. The first transaction is the transfer of a copy of Game X, which is a digital content transaction with one element because a customer receives from Corp A access only to offline content in exchange for purchasing a copy of the game. Therefore, this transaction is treated solely as a transfer of a copyrighted article under § 1.861–18.

(B) The second transaction between Corp A and a customer is the payment of a monthly fee to play Game X online on Corp A's servers, which is a cloud transaction with one element. Therefore, this transaction is treated solely as a cloud transaction, and is classified as the provision of services under paragraph (c)(1) of this section.

(C) The third transaction between Corp A and a customer is the payment of a one-time fee in exchange for an in-game item. Because a customer can utilize the item only when playing Game X through an internet connection, the transaction is a cloud transaction with one element. Therefore, this transaction is treated solely as a cloud transaction, and is classified as the provision of services under paragraph (c)(1) of this section.

(e) *Applicability date*—(1) *In general.* This section applies to taxable years beginning on or after January 14, 2025.

(2) *Early application.* A taxpayer can apply this section to taxable years beginning on or after August 14, 2019 and all subsequent taxable years not described in paragraph (e)(1) (early application years) if—

(i) The taxpayer also applies § 1.861–18 to the early application years;

(ii) This section and § 1.861–18 are applied to the early application years by all persons related to the taxpayer (within the meaning of sections 267(b) and 707(b));

(iii) The period of limitations on assessment for each early application year of the taxpayer and all related parties (within the meaning of sections 267(b) and 707(b)) is open under section 6501; and

(iv) The taxpayer would not be required under this section to change its method of accounting as a result of such election.

(f) *Change in method of accounting required by this section.* In order to comply with this section, a taxpayer may be required to change its method of accounting. If so required, the taxpayer must secure the consent of the Commissioner in accordance with the requirements of § 1.446–1(e) and the applicable administrative procedures for obtaining the Commissioner's consent under section 446(e) for voluntary changes in methods of accounting.

§ 1.937–3 [Amended]

■ **Par. 5.** Section 1.937–3 is amended by removing *Examples 4* and *5* from paragraph (e).

Douglas W. O'Donnell,

Deputy Commissioner.

Approved: December 18, 2024.

Aviva R. Aron-Dine,

Deputy Assistant Secretary of the Treasury (Tax Policy).

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[TD 10026]

RIN 1545–BQ72

Rules Regarding Certain Disregarded Payments and Dual Consolidated Losses

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final rule.

SUMMARY: This document contains final regulations regarding certain disregarded payments that give rise to deductions for foreign tax purposes and

avoid the application of the dual consolidated loss (''DCL'') rules. The final regulations affect domestic corporate owners that make or receive such payments. This document also announces additional transition relief for the application of the DCL rules to certain foreign taxes that are intended to ensure that multinational enterprises pay a minimum level of tax.

DATES:

Effective date: These regulations are effective on January 10, 2025.

Applicability dates: For dates of applicability, *see* §§ 1.1503(d)–8(b)(11), (15), (17), and (18), and 301.7701–2(e)(10).

FOR FURTHER INFORMATION CONTACT: Andrew L. Wigmore at (202) 317–5443 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Authority

This document contains amendments to 26 CFR parts 1 and 301 (the ''final regulations'') under sections 1503(d) and 7701 of the Internal Revenue Code (the ''Code''). The final regulations are issued pursuant to the express delegations of authority under section 7805(a), which authorizes the Secretary of the Treasury (the ''Secretary'') to ''prescribe all needful rules and regulations for the enforcement'' of the Code, section 1503(d)(2)(B), which authorizes the Secretary to provide exceptions to the term ''dual consolidated loss,'' and section 1503(d)(3), which authorizes the Secretary to address losses of ''separate units.''

Background

On December 11, 2023, the Department of Treasury (''Treasury Department'') and the IRS released Notice 2023–80, 2023–52 IRB 1583, which, among other things, described the interaction of the DCL rules with model rules published by the OECD/G20 Inclusive Framework on BEPS (the ''GloBE Model Rules'') [1] and requested comments on such interaction. The notice also announced limited transition relief from the application of the DCL rules to the GloBE Model Rules for ''legacy DCLs,'' which in general are DCLs incurred before the effective date of the GloBE Model Rules.

On August 7, 2024, the Treasury Department and the IRS published proposed regulations (REG–105128–23) in the **Federal Register** (89 FR 64750) under sections 1502, 1503(d), and 7701 of the Code, with a correction published in the **Federal Register** on September 3, 2024 (89 FR 71214) (the ''2024 proposed regulations''), that would address certain issues arising under the DCL rules. In general, the 2024 proposed regulations would clarify how the DCL rules interact with the intercompany transaction rules in § 1.1502–13, modify how items arising from stock ownership are taken into account when computing the amount of a DCL, and address the application of the DCL rules to foreign taxes that are based on the GloBE Model Rules. The 2024 proposed regulations also included disregarded payment loss (''DPL'') rules, under which domestic corporations would be required to include amounts in income in certain cases involving disregarded payments. Further, the 2024 proposed regulations included an anti-avoidance rule applicable for both DCL and DPL purposes.

This document finalizes certain rules from the 2024 proposed regulations. These rules and related comments received in response to the 2024 proposed regulations are discussed in the Summary of Comments and Explanation of Revisions section of this preamble. All comments are available at *https://www.regulations.gov* or upon request. A public hearing was held on the 2024 proposed regulations on November 22, 2024, but the speaker requesting to testify did not attend the hearing. The Treasury Department and the IRS intend to finalize, in future guidance, the remaining rules from the 2024 proposed regulations.

This document also announces additional transition relief for the application of the DCL rules to foreign taxes that are based on the GloBE Model Rules. This relief is discussed in the Additional Transition Relief with respect to the GloBE Model Rules section of this preamble.

Summary of Comments and Explanation of Revisions

I. Scope

This document finalizes the rules from the 2024 proposed regulations that relate to DPLs, including portions that are also relevant for DCLs, such as the anti-avoidance rule and the deemed ordering rule. The document retains the basic approach and structure of these rules, with certain revisions.

Part II of the Summary of Comments and Explanation of Revisions summarizes the DPL rules, including the purposes and general approach of the rules under the 2024 proposed regulations, and discusses related comments and revisions. Part III discusses comments and revisions related to rules applicable to both DCLs and DPLs. Part IV discusses applicability dates of the final regulations.

II. DPL Rules

A. Overview

The DPL rules are a component of the entity classification regulations under §§ 301.7701–1 through 301.7701–3 (the ''check-the-box regulations''). The check-the-box regulations were intended to bring simplicity and administrability to entity classifications under section 7701. They permit certain business entities to be classified for U.S. tax purposes as entities disregarded as separate from their owners. The classification may be determined either pursuant to default rules or by election. However, the application of these regulations to foreign entities, particularly where a foreign entity is treated as a disregarded entity, has led to unintended tax consequences, including avoidance of international provisions of the Code. The purpose of the DPL rules is to prevent certain arrangements involving disregarded entity classifications from avoiding the DCL rules.

As an example, when a domestic corporation borrows from a bank and on-lends the loan proceeds to its foreign disregarded entity, the single economic borrowing could give rise to deductions under both U.S. tax law (for interest payments to the bank) and foreign tax law (for interest payments to the domestic corporation). As a result, if the U.S. deduction is used to offset U.S. income that is not subject to foreign tax, and the foreign tax deduction generates a foreign loss that is used to offset foreign income that is not subject to U.S. tax (for example under a consolidation regime), then the single economic borrowing would give rise to a double deduction outcome. Such double deduction outcome, however, would not be addressed by the existing DCL rules because the loss of the disregarded entity would not be recognized for U.S. tax purposes. Conversely, if the disregarded entity's interest payments were regarded for U.S. tax purposes (for example, if the arrangement involved direct financing of the disregarded entity by the bank), the loss would be subject to the existing DCL rules. This avoidance of the DCL rules is an unintended consequence of the check-

[1] *See* OECD/G20, Tax Challenges Arising from the Digitalisation of the Economy Global Anti-Base Erosion Model Rules (Pillar Two). As the context requires, references to the GloBE Model Rules include references to a foreign jurisdiction's legislation implementing the GloBE Model Rules. Capitalized terms used in this preamble, but not defined herein, have the meanings ascribed to such terms under the GloBE Model Rules.

the-box regulations which, as noted above, were issued for the simplification and administrability of entity classification determinations.

The DPL rules are intended to address these concerns by (i) tracking whether certain payments involving a disregarded entity and its owner give rise to potential double deduction outcomes, and (ii) neutralizing any resulting double deduction outcome through an income inclusion similar to the one that that the owner would have had with respect to the payments had the payments been regarded for U.S. tax purposes (that is, had the classification as a disregarded entity under the check-the-box regulations not been taken into account). As revised under the final regulations, the DPL rules also treat the income inclusion as giving rise to a deduction, the use of which is suspended until the entity takes into account certain disregarded income, with the result that the rules are consistent with what would have occurred if certain disregarded payments were regarded for U.S. tax purposes (as discussed in part II.F of the Summary of Comments and Explanation of Revisions). In this way, the check-the-box regulations continue to permit certain entities to be disregarded for U.S. tax purposes (including by election), but such classifications are subject to new (targeted) rules that prevent the classifications from giving rise to avoidance of the DCL rules. Alternative approaches to addressing these concerns would include more broadly restricting disregarded entity classifications (for example, by requiring a foreign entity to be classified as an association for U.S. tax purposes if the entity is a foreign tax resident, or classifying single-owner foreign entities as associations in all cases).

Under the 2024 proposed regulations, the DPL rules would apply with respect to a domestic corporation and a disregarded entity of the domestic corporation (or a disregarded entity in which the domestic corporation indirectly owns an interest) if transactions involving the entity and domestic corporation are deductible under a foreign tax law, such as where the entity is a tax resident of a foreign country. *See* proposed § 301.7701–3(c)(4). In these cases, the 2024 proposed regulations described the domestic corporation as consenting to such application of the DPL rules (generally by reason of the entity's check-the-box election) and generally referred to the disregarded entity and the domestic corporation as a disregarded payment entity (''DPE'') and specified domestic owner, respectively. *See* proposed §§ 1.1503(d)–1(d)(1) and 301.7701–3(c)(4). This document retains the nomenclature of the 2024 proposed regulations, with certain simplifications or other modifications, such as referring to a specified domestic owner as a DPE owner and eliminating references to consent (discussed in part II.B.2 of the Summary of Comments and Explanation of Revisions).[2]

Under the proposed DPL rules, the DPE owner would monitor whether the DPE incurs a DPL or derives disregarded payment income (''DPI''). *See* proposed § 1.1503(d)–1(d)(1). A DPL or DPI would be determined by taking into account only certain items under the relevant foreign tax law (generally interest or royalties) that are not regarded for U.S. tax purposes. *See* proposed § 1.1503(d)–1(d)(6)(ii). The DPE would have a DPL to the extent that, under the foreign tax law, its deductions for such items exceed its income from such items, and it would have DPI to the extent the reverse is true. *See id.* Under the 2024 proposed regulations, a DPE's cumulative amounts of DPL and DPI would be tracked in the DPE's ''DPL cumulative register'' through negative and positive adjustments, respectively, to the register. *See* proposed § 1.1503(d)–1(d)(5)(ii).

In the case of a DPL, the DPE owner generally would disclose the DPL on an initial certification statement and file annual certifications for a 60-month period affirming that the DPL has not been put to a foreign use. *See* proposed § 1.1503(d)–1(d)(1). A failure to comply with this certification requirement, or a foreign use of the DPL within the certification period (each, a ''triggering event''), would require the DPE owner to include in gross income the DPL inclusion amount. *See* proposed § 1.1503(d)–1(d)(1) and (3). The DPL inclusion amount would be equal to the amount of the DPL, reduced by the positive balance (if any) in the DPL cumulative register. *See* proposed § 1.1503(d)–1(d)(2) through (5). Requiring the DPL inclusion amount in the year of the triggering event (rather than the year in which the DPL is incurred) would be consistent with the approach under the current DCL rules and avoids any administrative or compliance burdens that could result by instead requiring taxpayers to extend the statute of limitations and amend tax returns upon a triggering event of the DPL.

B. Rulemaking Authority

1. In General

Comments asserted that the DPL rules do not reflect a proper exercise of the Treasury Department and the IRS's rulemaking authority for a variety of reasons. Some comments claimed that Congress has not expressed a concern with deduction/no inclusion outcomes arising from disregarded payments because those types of outcomes are not explicitly described in sections 245A(e), 267A, or 1503(d), the Code's anti-hybrid provisions. These comments asserted that the DPL rules in effect implement the recommendations from the OECD reports[3] relating to disregarded payments but noted that Congress has not adopted those recommendations—whereas Congress did adopt other OECD recommendations in enacting sections 245A(e) and 267A. The comments accordingly argued that the 2024 proposed regulations inappropriately circumvent Congress by implementing OECD policies that Congress has rejected.

Other comments asserted that the DPL rules have no basis in section 1503(d), because section 1503(d) operates by disallowing a domestic corporation's net operating loss. These comments contended that the DPL rules go beyond what section 1503(d) permits because they impose an income inclusion (rather than deny a loss) based on disregarded transactions that cannot give rise to a net operating loss (which is computed by reference to regarded items only). Comments similarly argued that section 7701 provides no basis for the DPL rules because section 7701 pertains to an entity's tax classification and does not authorize income inclusions. One comment also contended that the Treasury Department and the IRS cannot rely on section 7805(a)'s general grant of rulemaking authority for the DPL rules because section 7805(a) authorizes the Secretary to issue regulations ''for the enforcement'' of the Code, and, according to the comment, the DPL rules do not relate to any Code provision.

Another set of comments argued that the DPL rules are arbitrary and capricious. According to the comments,

[2] The final regulations also clarify that the DPL rules address the avoidance of the DCL rules, which has been described differently in prior guidance. *See, for example,* REG–104352–18, 83 FR 67612, 67624 (noting that the DCL regulations do not apply to DPL structures, and that such structures give rise to outcomes similar to ''D/NI outcomes . . . and double-deduction outcomes . . .'') and REG–105128–23, 89 FR 64750, 64762 (noting that an income inclusion under the proposed DPL rules ''generally neutralizes the D/NI outcome'').

[3] *See* OECD/G20, Neutralising the Effects of Hybrid Mismatch Arrangements, Action 2: 2015 Final Report (October 2015) (''Hybrid Mismatch Report'') and OECD/G20, Neutralising the Effects of Branch Mismatch Arrangements, Action 2: Inclusive Framework on BEPS (July 2017) (''Branch Mismatch Report'').

the DPL rules address the erosion of foreign tax bases and thus are not in furtherance of any recognized U.S. tax policy, which, one comment stated, has historically permitted taxpayers to reduce their foreign tax liability. One comment further argued that taxpayers have a reliance interest on the certainty afforded by the check-the-box regulations, which, according to the comment, Congress has impliedly endorsed by leaving the regulations undisturbed since their issuance in 1996. The comment stated that the Treasury Department and the IRS cannot upset those reliance interests by adding the DPL rules to the check-the-box regime and asserted that changes to the regime to address hybridity-related concerns should not be made absent direction from Congress. The comment referred to Notice 98–11, 1998–1 C.B. 433, and the temporary and proposed regulations issued under the notice that treated a disregarded entity that engaged in certain transactions as a foreign corporation for purposes of subpart F of the Code. The Senate Finance Committee proposed a six-month moratorium on implementing the regulations to provide Congress time to consider the issues. *See* S. Rept. 105–174, at 107–110 (1998).

The Treasury Department and the IRS disagree with these comments. The DPL rules prevent certain disregarded entity classifications from giving rise to avoidance of the DCL rules (as discussed in part II.A of the Summary of Comments and Explanation of Revisions). Because these classifications arise under the check-the-box regulations, revising the regulations to prevent abuse, other misuse, or unintended consequences that only arise due to the classification rules under the check-the-box regime is an appropriate exercise of the authority underlying the regulations, including the express delegation of authority under section 7805(a) of the Code. These revisions generally produce outcomes consistent with what would have occurred if certain disregarded payments were regarded for U.S. tax purposes (as discussed in part II.F of the Summary of Comments and Explanation of Revisions).

As a limitation on disregarded entity classifications, the DPL rules are consistent with other special rules in the check-the-box regulations that regard an entity for certain limited purposes, while generally retaining the entity's disregarded entity classification. For example, disregarded entity status is not respected for purposes of certain rules related to banking, federal tax liabilities, and employment and excise taxes. *See* § 301.7701–2(c)(2)(ii) through (v). Similarly, § 301.7701–2(c)(2)(vi) treats certain domestic disregarded entities as corporations for purposes of section 6038A to provide the IRS with access to information to satisfy its obligations under international agreements and strengthen the enforcement of U.S. tax laws.

When the check-the-box regulations were issued, the preamble made clear that additional rules may be required to prevent inappropriate outcomes. TD 8697 (61 FR 66584, 66585) (describing that, in light of the increased flexibility under an elective regime for entity classifications, the Treasury Department and the IRS will monitor for, and take appropriate action to address, results that are inconsistent with the policies and rules of particular Code provisions). Further, the history of Notice 98–11 and the regulations issued thereunder do not support the conclusion that the Treasury Department and the IRS lack authority for the DPL rules. In fact, the Senate report specifically stated that the proposed moratorium on the regulations described in Notice 98–11 should not be interpreted as the Treasury Department and the IRS lacking authority to impose limitations on disregarded entity classifications. *See* S. Rept. 105–174, at 110 (1998).

Moreover, the DPL rules are a reasonable response to significant policy concerns resulting from the check-the-box regulations. Addressing these concerns by requiring an income inclusion (that neutralizes the double deduction outcome by, in effect, offsetting the related deduction that would otherwise be allowed for U.S. tax purposes) prevents taxpayers from circumventing the DCL rules through the artifice of causing payments to be disregarded. The approach in this rulemaking maintains the simplicity and flexibility (including the electivity component) of the check-the-box regulations while preventing inappropriate outcomes through new rules with narrow application. Further, taxpayers that prefer to avoid the application of the DPL rules can do so by restructuring to avoid these inappropriate outcomes, as illustrated in § 1.1503(d)–7(c)(45) (Example 45). *See also* parts II.D.1, II.D.2, II.F, and G.1 of the Summary of Comments and Explanation of Revisions (discussing certain revisions in response to comments, which have the effect of further narrowing and deferring the application of the DPL rules). Thus, by preventing the check-the-box regulations from enabling inappropriate outcomes, the DPL rules are a reasonable modification of the regulations. Furthermore, the Treasury Department and the IRS disagree that DPL rules inappropriately promote the policy underlying the OECD recommendations to address double non-taxation resulting from hybridity. Instead, the DPL rules promote the U.S. tax policy underlying section 1503(d), which was enacted in 1986 (and modified in a technical correction in 1988), to prevent double deduction outcomes; the OECD policy that was set forth in the Hybrids Mismatch Report and Branch Mismatch Report, issued in 2015 and 2017, respectively, is simply consistent with the existing, longstanding U.S. policy.

Finally, the Treasury Department and the IRS have consistently raised the concern that the check-the-box regulations could expand the use of hybrid structures. This concern was identified in Notice 95–14, 1995–14 IRB 7, which first announced that an elective entity classification regime was under consideration and solicited comments on the propriety of extending an elective regime to foreign entities, noting the increased potential for hybrid entities. Since then, the check-the-box regime has increased the prevalence of hybrid structures to an extent not initially foreseen, and many of these structures are designed for tax avoidance. The Treasury Department and the IRS have addressed this avoidance through targeted rules where feasible. *See, for example,* § 1.894–1(d)(2)(ii) and TD 8999 (67 FR 40157) (relating to the use of domestic reverse hybrid entities to obtain inappropriate treaty benefits); §§ 1.1503(d)–1(c) and 301.7701–3(c)(3) (relating to the use of domestic reverse hybrid entities to obtain double-deduction outcomes). Taxpayers therefore should not have an expectation that a disregarded entity classification can be used to circumvent the DCL rules, and in any case, the Treasury Department and the IRS are of the view that any such expectations would not constitute a significant reliance interest that would caution against this rulemaking, given the limited extent to which the DPL rules impose a condition on certain payments involving disregarded entities. Reliance interests, if any, are significantly outweighed by the need to prevent inappropriate results.

2. Default Disregarded Entity Status and Non-Consolidated DPE Owners

Comments also asserted that the Treasury Department and the IRS do not have authority to apply the DPL rules in specific fact patterns. According to these comments, the DPL rules should not apply where no entity classification

election is made under § 301.7701–3, such as where a foreign entity defaults to disregarded entity classification, because in these cases there is no affirmative act by reason of which the taxpayer consents to the application of the DPL rules. Another comment claimed that the DPL rules should not apply where the DPE owner is not part of a group that files a consolidated return, asserting that sections 1502 and 1503(d) cannot apply to a corporation that is not a member of a consolidated group.

The Treasury Department and the IRS disagree with these comments. As discussed in part II.B.1 of the Summary of Comments and Explanation of Revisions, the DPL rules are a component of the check-the-box regime. Under the check-the-box regulations, promulgated in 1996, the Treasury Department and the IRS permit certain entities with a single owner to choose whether or not to be treated as disregarded as separate from their owner for most federal income tax purposes. However, even entities that choose to be disregarded as separate from their owner for most federal income tax purposes are not disregarded for all purposes. For example, these entities are regarded for purposes of federal income tax liability, excise taxes, and employment taxes. *See* § 301.7701–2(c)(2). The treatment of an entity as disregarded for some purposes and regarded for other purposes under § 301.7701–2(c)(2) does not depend on whether the entity is treated as disregarded pursuant to the default rules or by election.

Like the other rules in § 301.7701–2(c)(2) and as discussed in part II.F of the Summary of Comments and Explanation of Revisions, the DPL regulations effectively provide that a DPE is regarded for purposes of recognizing certain interest and royalty payments between a DPE and its owner or between a DPE and other disregarded entities. However, for purposes of administrability, these rules do not regard the payment more broadly or require the filing of amended returns to reflect the revocation of a disregarded entity classification.

Further, the check-the-box regime is an elective regime that allows eligible entities to choose their entity classification. The check-the-box regulations provide default classification rules that aim to match taxpayers' expectations and thus reduce the number of elections that taxpayers must file to select their entity classification of choice. *See* TD 8797 (61 FR 66584). Thus, through the check-the-box regulations, an eligible entity chooses to be classified as a disregarded entity, regardless of whether that choice occurs by accepting the default classification (that is, by choosing not to elect an alternative treatment) or by filing an election; it is merely the mechanics of obtaining a disregarded entity classification that differ. On the other hand, absent regulations under section 7701, no foreign business entity would generally be treated as a disregarded entity.

Moreover, applying the DPL rules without regard to whether disregarded entity classification is obtained by election or pursuant to the default rules ensures consistency. Otherwise, similarly situated taxpayers could have different outcomes based solely on whether the entity they choose to use is an entity that satisfies the default rule to be treated as a disregarded entity rather than requiring an election to achieve that result.

Lastly, the DPL rules are not issued under section 1502 authority (and section 1503(d) is not limited in application to consolidated groups). The DPL rules are issued under the authority of sections 1503(d), 7701, and 7805(a) and are located under section 1503(d) because the rules leverage concepts from, and prevent the avoidance of, the DCL rules.

C. Integration of DPL and DCL Regimes

As discussed in part II.C of the Explanation of Provisions of the 2024 proposed regulations, the DPL rules operate independently of the DCL rules. For example, only items that are regarded for U.S. tax purposes are taken into account in computing a DCL (or the DCL cumulative register), and only items that are disregarded for U.S. tax purposes would be taken into account in computing a DPL (or the DPL cumulative register). The view of the Treasury Department and the IRS as expressed in the 2024 proposed regulations was that integrating the two regimes would result in considerable complexity and administrative burden. For example, fully integrating the regimes would likely require a significantly broader scope of the DPL rules to take into account all disregarded payments (consistent with the scope of the DCL rules, which take into account all regarded payments) and to take into account all of the triggering events that apply with respect to DCLs (rather than only two triggering events that apply under the DPL rules).

Comments requested integration or coordination of the DPL rules and DCL rules, suggesting that an integrated or coordinated set of rules could ensure consistent treatment of similar transactions (regardless of whether regarded or disregarded for U.S. tax purposes) and simplify compliance. For example, one comment proposed withdrawing the DPL rules and revising the DCL rules to ignore disregarded and intercompany transactions (as defined in § 1.1502–13(b)(1)) in calculating the amount of a DCL, while at the same time taking such transactions into account under a modified DCL register. Specifically, under this approach, a separate unit would calculate its income or loss both with and without disregarded and intercompany transaction items that offset in amount, with the smaller amount of income being dual income and thus increasing the DCL register, or with the smaller amount of loss being a dual loss and thus a DCL. The difference between the with-and-without calculation in a year would be tracked as an attribute—excess income or excess loss—for purposes of applying the with-and-without calculation in subsequent years. The comment stated that this approach would provide parity between disregarded and intercompany transactions, parity between calculation of a DCL register and the amount of a DCL, and parity between different types of items.

The final regulations do not adopt these comments because the Treasury Department and the IRS remain of the view that integration or other coordination would result in considerable complexity and administrative burden. Additionally, the with-and-without approach proposed by a comment would not address the double deduction outcome arising from a disregarded entity classification in a prototypical case involving a DPL arising from back-to-back financing where the disregarded entity does not also incur a DCL—that is, the excess loss carried forward for purposes of the with-and-without calculation would be relevant only to the extent that the disregarded entity's regarded items of deduction or loss in a year exceed the regarded items of income or gain in that year.

Another comment suggested that the DPL rules be replaced with an approach that would treat a disregarded entity as a regarded pass-through entity (for example, a one-partner partnership) solely for purposes of the DCL rules, citing section 1503(d) as authority for such an approach. The comment noted that the application of the DPL rules to a disregarded entity can be avoided by introducing another owner (thereby converting the entity to a partnership) and that the suggested approach avoids the administrative complexity of this

type of restructuring. The final regulations do not adopt this approach because it would require broader changes to check-the-box regulations (for example, by creating a new type of regarded pass-through entity), and it could increase complexity and compliance or administrative burden as a result of regarding items that are outside the scope of the DPL rules, such as payments for services and property transactions giving rise to ordinary income or loss.

Lastly, a comment suggested that because the DPL rules were issued as part of a notice of proposed rulemaking that also addresses the DCL rules and those would operate independently of each other, the DPL rules should be withdrawn and issued as a standalone notice of proposed rulemaking. According to the comment, this approach would afford taxpayers a more adequate notice-and-comment period and more clearly signal to affected taxpayers the standalone nature of the DPL rules. The Treasury Department and the IRS have determined that finalizing the DPL rules is appropriate regardless of whether the proposed version of the rules was included in a notice of proposed rulemaking that included other concepts and that the proposed version of the rules provided sufficient notice-and-comment, including about the standalone nature of the DPL rules.

D. Scope of DPL Rules

1. In General

Under the 2024 proposed regulations, the DPL or DPI of a DPE would be determined by taking into account only items that both (i) give rise to deductions or income of the DPE under a foreign tax law (in the case of deductions, determined with regard to any application of foreign hybrid mismatch rules), and (ii) are disregarded for U.S. tax purposes but would be interest, structured payments, or royalties if the items were regarded.[4] *See* proposed § 1.1503(d)–1(d)(6)(ii) and (d)(7)(v). This limited application of the DPL rules would address transactions that are likely structured to avoid the DCL rules.

Comments suggested narrowing the scope of the DPL rules in several respects (and not expanding the rules to cover other payments such as for disregarded services), so that the rules better address transactions likely to give rise to double non-taxation and minimize compliance burden. Some comments suggested that the DPL rules not apply to royalties, or at least royalties paid pursuant to a license executed before the date of the 2024 proposed regulations. A comment asserted that most foreign entities enter into intercompany licensing arrangements for non-tax business reasons and that restructuring these licenses is not always easy or feasible, including because of legal restrictions or foreign tax costs. Other comments asserted that the licenses generally create substantial dual inclusion income (either through exploiting the intangible property or sub-licenses) and, therefore, do not give rise to double non-taxation; one of these comments, however, noted that absent at least partial integration of the DCL and DPL regimes, the dual inclusion income attributable to a license agreement could be double counted by both reducing a DPL and a DCL.

Comments also suggested not applying the DPL rules to payments that are subject to tax in another foreign country (for example, payments between DPEs that are tax residents of different foreign countries), or possibly only to the extent that the other foreign country has a sufficiently high statutory or effective tax rate. A comment noted that an effective tax rate analysis for purposes of such an exception could rely on existing methods, like the GloBE Model Rules or the GILTI high-tax exception in § 1.951A–2(c)(7) but acknowledged resulting compliance and administrative burdens. Comments also suggested not applying the DPL rules if the disregarded entity has net income for foreign tax purposes (for example where the DPE's net regarded income or net disregarded services income exceeds its DPL), asserting that, absent such an exception, the entity classification regime would be more complex to administer and taxpayers would be incentivized to restructure in a manner that is adverse to U.S. tax policy and results in additional foreign tax and, in turn, additional foreign tax credits. Further, comments recommended not applying the DPL rules to payments subject to hybrid mismatch rules in the payor jurisdiction, contending that such jurisdiction has taken the necessary steps to address erosion of its tax base.

The final regulations generally do not adopt these specific comments. The Treasury Department and the IRS have determined that excluding all royalties from the DPL rules could incentivize new licensing structures intended to give rise to avoidance of the DCL rules given the ease with which licenses can be put in place.

The Treasury Department and the IRS have also determined that a deduction in both the United States and a foreign country is not adequately neutralized by an income inclusion in another foreign country. Additionally, to the extent that taxpayers generally minimize payments from entities in low-tax countries to related entities in high-tax countries, an exception for payments taxed at a sufficiently high tax rate would likely have limited effect while adding significant complexity.

Further, the Treasury Department and the IRS have determined that an exception under which the DPL rules do not apply if the disregarded entity has net income for foreign tax purposes would be contrary to the approach of maintaining separate DCL and DPL rules, and give rise to inappropriate results, as discussed in parts II.C and III.B of the Summary of Comments and Explanation of Revisions, respectively. Also, taking into account the application of foreign hybrid mismatch rules in determining a DPL or DPI will in many cases limit the application of the DPL rules to DPEs subject to foreign hybrid mismatch rules. Moreover, if there is no foreign use of a DPL and annual certification requirements are satisfied, the DPL rules have no further effect. The Treasury Department and the IRS remain of the view that the filing of certification requirements is necessary, even in situations where there may not be a net loss for foreign tax purposes in that particular year, to ensure that any deduction or loss composing a DPL is not put to a foreign use during the certification period. Moreover, this approach is consistent with the requirement in the DCL rules that a domestic use agreement be filed (to put a DCL to a domestic use) even in cases where it may be unlikely that a DCL can be put to a foreign use in a particular year, such as due to disregarded income that is not taken into account for DCL purposes.

Finally, structures involving hybridity that produce double deduction outcomes are contrary to the U.S. tax policies underlying section 1503(d). Consistent with the current DCL rules, the DPL rules apply even in circumstances where the absence of DPL rules could reduce the amount of foreign income tax that would otherwise be creditable for U.S. tax purposes or where the adoption of such rules may cause some taxpayers to restructure in a manner that increases the amount of creditable foreign income tax.

However, in response to these comments, the final regulations provide a de minimis exception and (consistent with a comment) do not apply the DPL

[4] References to interest throughout this preamble include a reference to a structured payment, as the context requires.

rules to royalties paid pursuant to a license agreement executed before the date of the 2024 proposed regulations. *See* § 1.1503(d)–1(d)(5)(ii)(E) and (d)(6)(vii). Together, these modifications are intended to further limit application of the DPL rules to cases that are likely structured to produce double deduction outcomes. The Treasury Department and the IRS have determined that this approach strikes an appropriate balance between that goal and considerations like those discussed in the preceding paragraphs, while also eliminating compliance burden in certain cases.

Under the de minimis exception, a DPL with respect to a DPE and a foreign taxable year is deemed to be zero if it is incurred in connection with the conduct of an active trade or business (based on rules set forth under § 1.367(a)–2(d)), and the amount of the DPL is less than the lesser of $3 million or 10 percent of the aggregate amount of all items of the DPE that are deductible under a foreign tax law. *See* § 1.1503(d)–1(d)(6)(vii). This de minimis threshold is determined based on the foreign tax law and, therefore, takes into account items regardless of whether regarded or disregarded for U.S. tax purposes.

2. Types of DPEs and Minority Interests

In addition to certain disregarded entities, the 2024 proposed regulations would treat certain foreign branches and dual resident corporations as DPEs. *See* proposed § 1.1503(d)–1(d)(1). This is because a payment treated as made by a foreign branch of a domestic corporation, including a dual resident corporation, under foreign tax law to a disregarded entity of the corporation could give rise to a deduction for foreign tax purposes without an inclusion for U.S. tax purposes, and any resulting double deduction generally would not occur if the payee were regarded for U.S. tax purposes. Further, where a DPE is owned through a partnership, the DPL rules would apply as to a DPE owner on a proportionate basis, based on the percentage of interests (by value) of the DPE that the DPE owner indirectly owns. *See* proposed § 1.1503(d)–1(d)(7)(ii).

Comments expressed concerns about applying the DPL rules to minority interests in DPEs, contending that such interests do not present the same related-party tax structuring concerns that the DPL rules are intended to address, and noting that a foreign use triggering event under the DPL rules requires a use by a person related to the DPE owner. The comments further noted that the DPE combination rule would exacerbate these concerns because, for example, a DPE owner's inability to comply with certification requirements with respect to a minority interest in a DPE could cause a triggering event with respect to a DPL attributable to that DPE and other DPEs in the same foreign country. Accordingly, the comments recommended applying the DPL rules with respect to a DPE owner and DPE only if the entities are related (determined under section 954(d)(3), for instance). A comment also asserted that applying the DPL rules on a proportionate basis by reference to the value of a partnership interest is burdensome because it requires an annual valuation of the partnership, and the comment suggested retaining this approach only to the extent that other partnership rules require similar valuations.

The Treasury Department and the IRS agree that the DPL rules should not apply to minority interests. Accordingly, the final regulations revise the DPE definition to exclude entities that are not related, within the meaning of section 954(d)(3), to a DPE owner. *See* § 1.1503(d)–1(d)(5)(i). In addition, where a DPE owner indirectly owns less than all the interests (but more than a minority interest) in a DPE, the final regulations remove the requirement in the 2024 proposed regulations that would apply the DPL rules on a proportionate basis based on value, because the Treasury Department and the IRS have determined that a DPE owner's proportionate interest can be determined under other reasonable methods.

Further, the final regulations clarify that a foreign branch owned by a domestic corporation through one or more partnerships may be a DPE. *See* § 1.1503(d)–1(d)(5)(i)(B). Thus, if a partnership makes a payment to a disregarded entity of the partnership and the payment is attributed to a foreign branch under foreign tax law, then (because the foreign branch may be a DPE) a domestic corporate partner's proportionate share of a resulting deduction under the foreign tax law can give rise to a DPL. *See* § 1.1503(d)–1(d)(6)(ii). Similarly, to address deductions arising under foreign tax law by reason of the partnership being a tax resident of a foreign country (rather than by reason of the partnership having a foreign branch), the final regulations provide that an entity that is treated as a partnership for U.S. tax purposes, but is a foreign tax resident, may be a DPE. *See* § 1.1503(d)–1(d)(5)(i)(C).

3. ''True'' Foreign Branches

Because the DPL rules are a component of the check-the-box rules, the rules do not apply with respect to deductions resulting under a foreign tax law from payments treated as made between a ''true'' foreign branch (that is, a foreign taxable presence not conducted through a disregarded entity) and its owner. One comment expressed concerns with disparate treatment resulting from this limitation, asserting that it would incentivize structures involving true foreign branches.

The Treasury Department and the IRS have determined that this concern does not detract from the utility of the DPL rules. To the extent disregarded entity classifications facilitate structures intended to give rise to avoidance of the DCL rules, addressing those structures through new rules is appropriate regardless of whether the new rules would also address structures that are less common or more burdensome to implement.

E. Foreign Use Issues

1. ''All or Nothing'' Principle

Under the 2024 proposed regulations, a foreign use of a DPL would be determined under the principles of the rules determining the foreign use of a DCL, which are in § 1.1503(d)–3. *See* proposed § 1.1503(d)–1(d)(3)(i). Thus, for example, under the so-called ''made available'' standard, a foreign use of a DPL would occur if any portion of a deduction taken into account in computing the DPL is made available under a relevant foreign tax law to offset an item of income that, for U.S. tax purposes, is an item of income of a foreign corporation that is related to the DPE owner. Generally, a foreign use of a DPL (or DCL) would occur as a result of structures intended to avoid the application of the DCL rules.

The concept of the entirety of a DPL (or DCL) being put to a foreign use by reason of the availability under a relevant foreign tax law of any portion of a deduction composing the DPL (or DCL) is, in conjunction with the ''made available'' standard, referred to as the ''all or nothing'' principle. *See* TD 9315 (72 FR 12902, 12910–11). As indicated in the preamble to the 2024 proposed regulations, the all or nothing principle addresses a concern of the Treasury Department and the IRS that alternative approaches, such as treating a foreign use as occurring only to the extent that a deduction actually offsets income of a foreign corporation, would lead to significant administrative complexity and the need for detailed ordering rules.

A comment recommended against the all or nothing principle, asserting that the administrability concerns underlying the principle in the DCL

context are not applicable in the DPL context because a DPL is defined only by reference to certain deductions existing for foreign tax purposes and, thus, the DPL rules do not require an analysis of whether an item that exists for U.S. tax purposes composes an item that exists for, and has been made available for use under, a foreign tax law. Additionally, the comment stated that the all or nothing principle is inconsistent with OECD reports and can give rise to inappropriate outcomes.

The Treasury Department and the IRS remain of the view that departing from the all or nothing principle in the DPL context would (like in the DCL context) give rise to significant administrability and compliance concerns. *See also* TD 9315, 72 FR 12902, 12911 (''The IRS and Treasury Department continue to believe that, even under the approaches suggested by these commentators, departing from the all or nothing principle would lead to substantial administrative complexity.'') For example, specific rules would be needed to address a situation where portions of each of a DPL and a non-DPL loss are shared through foreign tax consolidation or a similar regime, as well as a situation where a foreign corporation has a net operating loss that forms part of a net operating loss carryforward that includes the DPL. Additionally, the Treasury Department and the IRS have determined that consistency is needed between the DCL rules and DPL rules because the DPL rules are intended to prevent the avoidance of the DCL rules. Accordingly, the final regulations do not adopt the comment.

2. Carrybacks and Carryforwards of Losses Under Foreign Tax Law

A comment stated that a foreign use of a DPL can occur only if, under a foreign tax law, deductions composing a DPL are included in a net operating loss that is carried forward or carried back to another taxable year, and the comment suggested that the DPL certification rules should be limited to monitoring whether such a carryover occurs. According to the comment, the scenarios presenting the risk of a foreign use of a DPL are more limited than the scenarios presenting the risk of a foreign use of a DCL because, unlike DCLs, DPLs do not give rise to timing differences between U.S. and foreign tax systems.

The Treasury Department and the IRS agree that a foreign use of a DPL may occur through carryforwards or carrybacks of losses but have determined that a foreign use would more commonly occur in the year in which the DPL is incurred. A foreign use could also result from a merger or similar transaction (such as the transfer of the interests in the DPE that incurs the DPL to a related CFC). Accordingly, the final regulations do not adopt this comment.

3. Mirror Legislation Rule

The final regulations narrow the definition of a foreign use for DPL purposes by excluding the deemed foreign use that may occur under the mirror legislation rule. *See* § 1.1503(d)–3(e)(4). This exception, which is consistent with the exception in § 1.1503(d)–3(e)(3) for domestic consenting corporations, clarifies that any denial of a deduction for a disregarded payment under foreign hybrid mismatch rules is not treated as giving rise to a DPL or a foreign use of a DPL. *See also* § 1.1503(d)–1(d)(6)(v) (coordination with foreign hybrid mismatch rules).

F. DPL Cumulative Register and Deduction for a DPL Inclusion

The 2024 proposed regulations would provide that a DPL cumulative register with respect to a DPE is, for each foreign taxable year of the DPE, increased by the DPE's DPI or decreased by its DPL. *See* proposed § 1.1503(d)–1(d)(5)(ii). When a DPL of the DPE is triggered, any positive balance in the cumulative register would be applied to the DPL and, accordingly, would reduce the amount that the DPE owner must include in income with respect to the DPE under the DPL rules. *See* proposed § 1.1503(d)–1(d)(2) and (5).

Comments recommended that the DPL cumulative register be adjusted to include a DPL inclusion amount that has been included in the DPE owner's gross income. The comments noted that, without such an adjustment, a single DPL could be included in the DPE owner's income more than once. Comments also recommended treating a DPL inclusion as giving rise to a deduction (or similar offset) of the DPE owner in subsequent taxable years to prevent the DPL rules from permanently increasing U.S. taxable income. These comments suggested allowing such a deduction (or similar offset) once the DPE has sufficient DPI or ''dual inclusion income'' (determined as the lesser of certain foreign taxable income and certain U.S. taxable income) in subsequent years. Further, a comment recommended treating the deduction as having the same U.S. tax characteristics (for example, character and source) as the DPL inclusion.

The Treasury Department and the IRS agree with these comments. The final regulations thus modify the determination of a DPL cumulative register so that a DPL does not decrease the register, thereby preventing a negative balance in the register. *See* § 1.1503(d)–1(d)(2)(iii); *see also* § 1.1503(d)–7(c)(42) (example illustrating this rule). This approach generally achieves the same outcomes as those recommended by comments, while also facilitating the application of any positive register balance to a triggered DPL in cases where there are multiple DPLs but not all the DPLs are triggered.

Additionally, to reflect a DPL inclusion (and consistent with comments), the final regulations provide the DPE owner a deduction (not to exceed the DPL inclusion) to the extent that the DPE derives DPI in a year following the year of the DPL inclusion. *See* § 1.1503(d)–1(d)(1) and (d)(2)(ii). Regardless of the extent to which the DPI is derived from interest or royalties, the deduction has the same character and source as the DPL inclusion to which it relates. *See* § 1.1503(d)–1(d)(2)(iv)(B). In this way, the DPE owner's items of income and deduction under the DPL rules are similar to the items that the DPE owner would have had if the payments composing the DPL were regarded for U.S. tax purposes. To illustrate, consider a case where a disregarded entity makes a payment to its domestic corporate owner and the payment gives rise to an interest deduction under foreign tax law that is put to a foreign use in the current year. If the payment were instead regarded for U.S. tax purposes (for example, if the payment were instead a § 1.1502–13 intercompany transaction), the payment would give rise to an income inclusion in the current year and a deduction, the use of which generally would be suspended under the DCL rules until there is sufficient income in subsequent years. The DPL rules produce a similar outcome.

Finally, to prevent a single DPL from giving rise to more than one DPL inclusion, the final regulations terminate the certification period with respect to a DPL as a result of a DPL inclusion. *See* § 1.1503(d)–1(d)(6)(iii).

G. Computation of a DPL or DPI for Partial-Year DPE Status

Comments requested clarification on how to compute a DPL or DPI for the first foreign taxable year in which an entity or branch is treated as a DPE of a DPE owner. In such a case, some comments suggested a rule pursuant to which the DPL or DPI would be computed without regard to items incurred (or allocable to, including

under the principles of § 1.1502–76(b)) during the portion of the foreign taxable year that precedes the first day that the DPL rules apply with respect to the DPE owner and DPE.

The Treasury Department and the IRS agree with these comments, and the final regulations therefore clarify that items incurred or derived in the portion of a foreign taxable year that an entity or foreign branch is not a DPE are not taken into account for purposes of calculating DPI or DPL. *See* § 1.1503(d)–1(d)(5)(ii). On the other hand, if an entity or foreign branch is a DPE at all times during the foreign taxable year, this pro-ration rule does not apply even though the DPE owner's U.S. taxable year may differ from the DPE's foreign taxable year.

H. Additional Reporting and Documentation

One comment supported the DPL rules, noting that closing this existing loophole and providing clarity is important to ensure tax fairness, prevent abuse, and provide consistency. The comment also suggested that the rules provide detailed guidance on the documentation and reporting requirements for disregarded payments, such as specifying that taxpayers must maintain detailed records and submit these records as part of their tax filings.

The Treasury Department and the IRS have determined that the documentation and reporting requirements in the proposed regulations, as modified in these final regulations (such as to require additional reporting in § 1.1503(d)–1(d)(4)(iv) related to the suspended deduction), are sufficient for the IRS to administer the rules effectively. Further, the IRS may request additional information regarding DPLs on audit, as necessary. Accordingly, this comment is not adopted.

III. Rules That Apply to Both DCLs and DPLs

A. Anti-Avoidance Rule

The 2024 proposed regulations would include an anti-avoidance rule that applies with respect to both DCLs and DPLs. This rule generally would provide that appropriate adjustments may be made with respect to a transaction, series of transactions, plan, or arrangement that is engaged with a view to avoid the purposes of section 1503(d) and the regulations thereunder. *See* proposed § 1.1503(d)–1(f). The preamble to the 2024 proposed regulations noted that the anti-avoidance rule could address new avoidance structures or interpretations, rather than continuing to address these transactions on a case-by-case basis through the adoption of new rules. *See* part I.C. of the Explanation of Provisions of the 2024 proposed regulations.

Some comments asserted that the application of the anti-avoidance rule is unclear and should therefore be withdrawn. Other comments requested that, rather than applying the anti-avoidance rule based on whether there is ''a view'' to avoid the purposes of section 1503(d) and the regulations thereunder, it should apply based on the more common principal purpose-based standard, or if the taxpayer is attempting to ''evade'' the purposes of section 1503(d). Comments also requested additional examples illustrating the application or nonapplication of the anti-avoidance rule, including examples that would clarify that the anti-avoidance rule does not apply if taxpayers restructure their operations to avoid the application of the DPL rules. Finally, one comment requested that, consistent with the general approach in the DCL rules to calculate the amount of a DCL based on U.S. tax items, the anti-avoidance rule should be revised to ignore the treatment of items under foreign law.

In response to the comments, the anti-avoidance rule is modified to make clear that the purpose of section 1503(d) and the regulations thereunder is to prevent double deduction and similar outcomes. Thus, if taxpayers restructure their arrangements to avoid the application of the DPL rules or the DCL rules, such as by converting disregarded payments into regarded payments or terminating agreements that give rise to disregarded payments, the anti-avoidance rule does not apply if the restructured arrangement does not give rise to the potential for two deductions—one for foreign tax purposes, and one for US. tax purposes. *See* § 1.1503(d)–1(f). The final regulations also provide additional examples that illustrate the application, and nonapplication, of the anti-avoidance rule. *See* § 1.1503(d)–7(c)(44) and (45). The Treasury Department and the IRS continue to study how the intercompany transaction rules of § 1.1502–13 would apply to the facts such as those presented in the example in § 1.1503(d)–7(c)(44).

The final regulations add certain exceptions to the application of the anti-avoidance rule, as it applies to DCLs, for transactions or interpretations that would be addressed by rules in the 2024 proposed regulations. *See* § 1.1503(d)–1(f)(2). For example, the anti-avoidance rule does not apply to structures that may reduce or eliminate a DCL by reason of items of income arising from the ownership of stock and taken into account under § 1.1503(d)–5(b)(1) or (c)(4)(iv) (the ''stock ownership rule''). This exception is intended to make clear that the anti-avoidance rule does not apply in such a case even though the 2024 proposed regulations would eliminate the stock ownership rule (other than with respect to certain portfolio interests) and the preamble to the 2024 regulations states that taxpayers may be affirmatively structuring into the rules to produce inappropriate double-deduction outcomes. The Treasury Department and the IRS have determined that the anti-avoidance rule should not apply in such cases at this time, despite the policy concerns underlying the transactions, because the substantive rules that would address the transactions have not yet been finalized. These exceptions to the anti-avoidance rule would be removed or modified if, after taking into account comments, the corresponding rules in the 2024 proposed regulations are finalized in a subsequent guidance project. The non-application of the anti-avoidance rule in these cases does not affect the potential application of other rules or judicial doctrines, such as the substance-over-form or step-transaction doctrines. The Treasury Department and the IRS request comments on the modification or removal of these exceptions upon finalization of the corresponding proposed rules.

In light of the additional certainty and clarity provided by the modification to the rule and the additional examples, these final regulations do not adopt the recommendations to withdraw the anti-avoidance rule or employ a new standard based on a principal purpose or evasion. Finally, because the anti-avoidance rule applies with respect to the DPL rules, which are premised on the treatment of items under foreign law, these final regulations do not adopt the recommendation to ignore foreign law treatment in applying the anti-avoidance rule.

B. Deemed Ordering Rule

In determining the foreign use of a DPL, the 2024 proposed regulations would provide that the principles of the exceptions in § 1.1503(d)–3(c) apply, which include the deemed ordering rule under § 1.1503(d)–3(c)(3). *See* proposed § 1.1503(d)–1(d)(3)(i). This rule generally would provide that if losses or deductions are available under foreign law both to offset income that would constitute a foreign use and income that would not constitute a foreign use, and the foreign law does not provide applicable rules for determining which

income is offset by the losses or deductions, then the losses or deductions are first deemed to be available to offset the income that would not constitute a foreign use, to the extent thereof, before being considered to be made available to offset the income that would constitute a foreign use. *See* § 1.1503(d)–3(c)(3).

In cases where a DPE has both a DPL and income that is not DPI, such as items of income other than interest and royalties that are disregarded for U.S. tax purposes or income that is regarded for U.S. tax purposes, comments asserted that the application of the deemed ordering rule is unclear, and that income that is not DPI should be taken into account in determining whether the exception prevents a foreign use of the DPL (or, alternatively, prevents the creation of a DPL). Under this approach, a DPL would be treated as first offsetting the DPE's income under the foreign tax law, regardless of whether that income is regarded or disregarded. Accordingly, no foreign use of a DPL would generally occur if the DPE has net positive income under the foreign tax law.

The Treasury Department and the IRS disagree with these comments. The deemed ordering rule is related to, and therefore must apply in a manner consistent with, the rules that calculate a DCL or DPL and related cumulative register. Thus, because the calculation of a DCL and DCL cumulative register only takes into account regarded items, the deemed ordering rule as applied to DCLs also must only take into account such items. Similarly, because the calculation of a DPL and DPL cumulative register only takes into account disregarded interest and royalties, so too should the deemed ordering rule only take such items into account. This consistent approach promotes coordinated outcomes, ensures that all relevant items are appropriately taken into account, and avoids double-counting concerns. A partial integration of the DCL and DPL rules only in the deemed ordering rule would not be appropriate without providing comprehensive rules to address, for example, the opposite fact pattern where regarded items of deduction or loss could be viewed as offsetting disregarded interest and royalty income and thereby creating or increasing the amount of a DPL that is put to a foreign use.

One comment requested clarification regarding the condition that the deemed ordering rule applies only if the laws of the foreign country do not provide applicable rules for determining which income is offset by the losses or deductions. The comment noted, as an example, that such uncertainty can arise in connection with the steps required in applying the GloBE Model Rules. It has also been observed that the method by which the foreign country takes into account items that would, or would not, give rise to a foreign use likely would not change the arithmetic result of determining taxable income under foreign law or otherwise have economic significance. Further, there is no similar condition in the rules that determine a DCL or DPL, or the related cumulative registers, and as noted above these regimes should operate in a consistent manner. As a result, the final regulations eliminate this condition from the deemed ordering rule for purposes of both the DPL and DCL rules. *See* § 1.1503(d)–3(c)(3).

IV. Applicability Dates

A. DPL Rules

The 2024 proposed regulations would apply the DPL rules as of the date those regulations were filed with the **Federal Register** (August 6, 2024), subject to a one-year delay for certain entities in existence on that date. *See* proposed § 301.7701–3(c)(4)(vi). Comments requested a deferred application of the DPL rules, with some suggesting specific dates (such as taxable years beginning after publication of final regulations) and others generally suggesting additional time for taxpayers to implement new processes and systems or undertake restructurings to avoid the application of the DPL rules. Comments also requested clarification on when the DPL rules would apply in cases like one where a domestic corporation owns multiple disregarded entities that are tax residents of foreign countries, with some (but not all) formed or acquired after August 6, 2024, but before August 6, 2025.

The Treasury Department and the IRS agree with the suggestions to defer application of the DPL rules. Accordingly, the final regulations apply the DPL rules to taxable years of DPE owners beginning on or after January 1, 2026. *See* §§ 1.1503(d)–8(b)(11) and 301.7701–2(e)(10). This use of a single applicability date obviates the need for additional rules clarifying application of the DPL rules in cases like ones where a domestic corporation owns multiple disregarded entities.

B. Other Rules

The final regulations apply the anti-avoidance rule to DCLs incurred in taxable years ending on or after August 6, 2024, consistent with the approach in the 2024 proposed regulations. *See* § 1.1503(d)–8(b)(15). Further, consistent with the applicability date of the DPL rules, the anti-avoidance rule applies to DPLs for taxable years beginning on or after January 1, 2026. *See id.* Additionally, the final regulations apply revisions to the deemed ordering rule in § 1.1503(d)–3(c)(3) to DCLs incurred in taxable years beginning on or after January 1, 2026, and to DPLs in taxable years beginning on or after January 1, 2026 (each consistent with the applicability date of the DPL rules). *See* § 1.1503(d)–8(b)(17). Finally, the final regulations apply the rule regarding the non-application of the sixty-month limitation for an entity that, absent an election to change its classification, would become a DPE as of August 6, 2024. *See* § 301.7701–2(e)(10).

Additional Transition Relief With Respect to the GloBE Model Rules

As noted in the Background of this preamble, the 2024 proposed regulations would address the application of the DCL rules to the GloBE Model Rules. For example, the 2024 proposed regulations would provide that an IIR or QDMTT may be an income tax for purposes of the DCL rules.[5] The 2024 proposed regulations also would address the effect of an IIR or a QDMTT on certain entities and foreign business operations, the application of the DCL rules to the Transitional CbCR Safe Harbour, and the interaction of the duplicate loss arrangement rules with the mirror legislation rule under § 1.1503(d)–3(e). In addition, the 2024 proposed regulations would extend and broaden, the transition relief announced in Notice 2023–80 such that the DCL rules (including the DPL rules) would generally apply without taking into account QDMTTs or Top-up Taxes collected under an IIR or UTPR with respect to losses incurred in taxable years beginning before August 6, 2024. *See* proposed § 1.1503(d)–8(b)(12). This extension, and broadening, would provide taxpayers more certainty, allow for further consideration of the proposed regulations and related comments, and allow for consideration of further developments at the OECD.

Several comments requested additional transition relief for the application of the DCL rules and DPL rules to the GloBE Model Rules. For example, comments suggested that the applicability date be delayed until taxable years beginning on or after

[5] The Qualified Domestic Minimum Top-up Tax (''QDMTT''), IIR (also referred to as the income inclusion rule), and UTPR (also referred to as the under-taxed profits rule) are defined in Article 10 of the GloBE Model Rules.

January 1, 2025, or through 2026; another comment suggested that the rules not apply until there are final DCL rules and final GloBE Model Rules. Some comments requested additional transition relief because the GloBE Model Rules are still evolving, and relief would allow for additional time to take into account additional OECD guidance and legislation enacted by jurisdictions to incorporate the GloBE Model Rules. One comment stated that if the DCL rules and DPL rules apply with respect to UTPRs that transition relief be provided for such application for at least 2025. Finally, one comment requested clarification that the transition relief is also available with respect to DPLs.

The Treasury Department and the IRS agree that additional transitional relief is warranted. As some comments noted, such relief would allow additional time to consider future OECD guidance and legislation enacted by foreign jurisdictions that would implement the GloBE Model Rules. Accordingly, when the 2024 proposed regulations addressing the application of the DCL rules to the GloBE Model Rules are finalized, the applicability date set forth in the 2024 proposed regulations will be modified. The final regulations will provide that the DCL rules will apply without taking into account QDMTTs or Top-up Taxes collected under an IIR or UTPR incurred in taxable years beginning before August 31, 2025. The additional transition relief does not affect the application of the DPL rules because the DPL rules do not apply until taxable years beginning on or after January 1, 2026. Taxpayers may rely on the guidance described in this paragraph until final regulations are published in the **Federal Register**. The transition relief is limited to an additional year to minimize the double deduction outcomes that may result.

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 regulations requires the collection of information.

As discussed in part II.B.3 of the Explanation of Provisions of the 2024 proposed regulations, to avoid or reduce a DPL inclusion amount certain taxpayers are required to make certifications, for example, 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 these final 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.

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 these final regulations will have a significant economic impact on a substantial number of small entities. However, because there is a possibility of significant economic impact on a substantial number of small entities, an initial regulatory flexibility analysis was provided in the 2024 proposed regulations. No comments were received in response to the request for comments concerning the number of small entities that may be impacted and whether that impact will be economically significant.

A. Reasons Why Action Is Being Considered

As explained in part II.A of the Explanation of Provisions of the 2024 proposed regulations, the disregarded payment loss rules in these final regulations address certain hybrid payments that can give rise to double deduction outcomes.

B. Objectives of, and Legal Basis for, the 2024 Proposed Regulations

The disregarded payment loss rules in these final regulations require an income inclusion for U.S. tax purposes to prevent the avoidance of the DCL rules that would otherwise arise from certain disregarded payments. Sections 1503(d)(2)(B) and (d)(3), 7701, and 7805 of the Code are the legal basis for these regulations.

C. Small Entities to Which These Regulations Will Apply

Because an estimate of the number of small businesses affected is not currently feasible, this 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 final regulations will affect a substantial number of small nonprofit organizations or small governmental jurisdictions.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The final regulations impose a certification requirement that is filed with a domestic corporation's tax return, and to comply with that requirement the domestic corporation may need to keep records such as its DPL cumulative register as defined in § 1.1503(d)–1(d)(2)(iii). *See* § 1.1503(d)–1(d)(4)(iii).

E. Duplicate, Overlapping, or Relevant Federal Rules

The Treasury Department and the IRS are not aware of any Federal rules that duplicate, overlap, or conflict with these final regulations.

F. Alternatives Considered

These final regulations address policy concerns that are similar to the concerns underlying the enactment of section 1503(d), which applies uniformly to large and small business entities. The Treasury Department and the IRS have determined that these final 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 these final regulations for small entities. The Treasury Department and the IRS expect that the revisions in these final regulations to apply a de minimis threshold, and exclude royalties from

pre-August 6, 2024, licenses and minority interests, will reduce any economic impact that the regulations could have on small entities.

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 final 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 final 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.

Effect on Other Documents

Section 3 of Notice 2023–80 (2023–52 IRB 1583) is obsolete as of August 6, 2024.

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.*

Drafting Information

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

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.

Adoption of Amendments to the Regulations

Accordingly, the Treasury Department and the IRS 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 § 1.1503(d) and adding entries for §§ 1.1503(d)–1 through 1.1503(d)–8 in numerical order to read as follows:

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

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Sections 1.1503(d)–1 through 8 also issued under 26 U.S.C. 953(d), 1502, 1503(d) and (d)(2)(B), (d)(3), and (d)(4), and 7701.

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■ **Par. 2.** Section 1.1503(d)–1 is amended by:

■ 1. Revising the section heading;

■ 2. Revising and republishing paragraph (a);

■ 3. Redesignating paragraph (d) as paragraph (e);

■ 4. Adding a new paragraph (d);

■ 5. Revising the paragraph heading for newly redesignated paragraph (e);

■ 6. In newly redesignated paragraphs (e)(1) through (3), removing the language ''section 1503(d) and these regulations'' in each place it appears and adding the language ''this section and §§ 1.1503(d)–2 through 1.1503(d)–8'' in its place; and

■ 7. Adding paragraph (f).

The revisions and additions read as follows:

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

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

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(d) *Disregarded payment loss (DPL) rules*—(1) *In general.* The disregarded payment loss rules of this paragraph (d) only apply to a domestic corporation (including a dual resident corporation) that directly or indirectly owns an interest in a disregarded entity, regardless of whether the disregarded entity is domestic or foreign (such a domestic corporation, a *disregarded payment entity owner,* or *DPE owner*). If these rules apply to a DPE owner, then the DPE owner determines disregarded payment income or disregarded payment loss of its disregarded payment entities (if any) described in paragraph (d)(5)(i)(A), (B), (C), or (D) of this section in accordance with paragraph (d)(5)(ii) of this section and, in the case of a disregarded payment loss for which a triggering event occurs under paragraph (d)(3) of this section, includes an amount equal to the DPL inclusion amount in gross income and establishes a suspended deduction in accordance with paragraph (d)(2) of this section. The inclusion required under this paragraph (d)(1) and paragraph (d)(2)(i) of this section is included in the taxable year of the DPE owner in which the triggering event occurs, and the corresponding suspended deduction under this paragraph (d)(1) and paragraph (d)(2)(ii) of this section is established in the subsequent taxable year of the DPE owner. See § 1.1503(d)–7(c)(42) for an example illustrating the application of the disregarded payment loss rules.

(2) *DPL amounts*—(i) *DPL inclusion amount.* 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. Such amount is reduced (but not below zero) to the extent of the balance in the DPL cumulative register of the disregarded payment entity if the certification requirement under paragraph (d)(4)(iii) of this section is satisfied.

(ii) *Suspended deduction.* With respect to a DPL inclusion amount, a DPE owner establishes a suspended deduction in an amount equal to the DPL inclusion amount. The suspended deduction is allowed as a deduction under the principles of § 1.1503(d)–6(h)(6) by treating the suspended deduction as if it were a reconstituted net operating loss that becomes deductible only to the extent of

disregarded payment income derived in the taxable year in which the suspended deduction is established or subsequent taxable years (as measured by the disregarded payment entity's DPL cumulative register), provided that the certification requirement under paragraph (d)(4)(iv) of this section is satisfied.

(iii) *DPL cumulative register.* 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 is—

(A) Increased by the amount of disregarded payment income of the entity for the foreign taxable year, and then, after determining the DPL inclusion amount for the year,

(B) Decreased by the amount of the cumulative register balance that is used under paragraph (d)(2)(i) or (ii) of this section.

(iv) *Character and source*—(A) *DPL inclusion amount.* A DPE owner's income inclusion for a DPL inclusion amount is, for all U.S. tax purposes, treated as ordinary income, and characterized and sourced, including for purposes of sections 904(d) and 907, in the same manner as if the disregarded payment entity were a foreign corporation and the amount were interest or royalty income paid by the 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. Further, for these purposes, a deduction attributable to a structured payment or a deduction with respect to equity is treated as an interest deduction.

(B) *Suspended deduction.* A DPE owner's deduction with respect to a suspended deduction is, for all U.S. tax purposes, characterized and sourced in the same manner as the income for the DPL inclusion amount to which it relates. If the income from the DPL inclusion amount is assigned to multiple statutory and residual groupings, the deduction is allocated and apportioned to each grouping in the same proportions as the DPL inclusion amount.

(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 DPE 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 the foreign law 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 DPE owner of the disregarded payment entity. When applying the principles of the deemed ordering rule in § 1.1503(d)–3(c)(3), items of income or gain are taken into account only to the extent such items are described in paragraph (d)(5)(ii)(D) of this section; thus, for example, such items include items of income that are or would be taken into account in determining the amount of disregarded payment loss or disregarded payment income, and exclude items that are regarded for U.S. tax purposes.

(ii) *Failure to comply with certification requirements.* A failure by the DPE owner of the disregarded payment entity to comply with the certification requirements of paragraphs (d)(4)(i) and (ii) of this section.

(4) *Certification requirements.* Except as otherwise provided in publications, forms, instructions, or other guidance, a DPE owner of a disregarded payment entity is subject to the certification requirements of this paragraph (d)(4) with respect to a disregarded payment loss of the disregarded payment entity.

(i) For its taxable year that includes the date on which the foreign taxable year in which a disregarded payment loss is incurred ends, the DPE owner must attach with its timely filed tax return a certification labeled ''Initial Disregarded Payment Loss Certification Under Section 1503(d),'' 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 taxable years after the taxable year described in paragraph (d)(4)(i) of this section that includes a date on which a foreign taxable year ends, the DPE owner must attach with its timely filed tax return a certification labeled ''Annual Disregarded Payment Loss Certification Under Section 1503(d)'' 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 disregarded payment 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 DPE owner will be informed of any such foreign use.

(iii) If a disregarded payment entity has a balance in its DPL cumulative register upon a DPL triggering event and the DPE owner includes in gross income a DPL inclusion amount that is less than the amount of the disregarded payment loss, the DPE owner of the disregarded payment entity must attach a statement labeled ''Reduction of Disregarded Payment Loss Amount Under Section 1503(d)'' to its 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 (other than a foreign taxable year where the entity or branch is not a disregarded payment entity) up to and including the foreign taxable year

with respect to which the triggering event occurs.

(iv) If a DPE owner claims an allowed deduction with respect to a suspended deduction, the DPE owner must attach a statement labeled ''Release of Suspended Deduction Under Section 1503(d)'' to the income tax return for the taxable year in which the deduction is allowed and provide any other information as requested by the Commissioner, including in regulations, forms, instructions or other guidance. The statement must describe the DPE owner's DPL inclusion amount to which the suspended deduction relates and 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 deduction is allowed.

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

(i) The term *disregarded payment entity* means, with respect to a DPE owner, any entity, foreign branch, or dual resident corporation described in paragraph (d)(5)(i)(A), (B), (C) or (D) of this section.

(A) A disregarded entity that is a foreign tax resident and related to the DPE owner, provided that the DPE owner directly or indirectly owns interests in the disregarded entity.

(B) A foreign branch of the DPE owner and a foreign branch of an entity that is related to the DPE owner and in which the DPE owner directly or indirectly owns an interest.

(C) An entity that is treated as a partnership for U.S. tax purposes that is a foreign tax resident and related to the DPE owner, provided that the DPE owner directly or indirectly owns an interest in the entity.

(D) The DPE owner itself if it is a dual resident corporation.

(ii) The terms *disregarded payment income* and *disregarded payment loss* have the meanings set forth in this paragraph (d)(5)(ii). For purposes of computing the disregarded payment income or disregarded payment loss of a disregarded payment entity, a DPE owner takes into account the disregarded payment income or disregarded payments loss of each disregarded payment entity for each foreign taxable year that ends with or within its U.S. taxable year and an item is taken into account only if it gives rise to income or a deduction under the relevant foreign tax law during the portion of the foreign taxable year in which the entity or foreign branch is a disregarded payment entity; for purposes of allocating an item to a period, the principles of § 1.1502–76(b) apply. Thus, for example, if a DPE owner with a calendar U.S. taxable year becomes subject to the disregarded payment loss rules for the U.S. taxable year beginning on January 1, 2026, the disregarded payment income or disregarded payment loss of a disregarded payment entity of the DPE owner with a foreign taxable year ending on June 30, 2026, excludes items allocated (under the principles of § 1.1502–76(b)) to the pre-January 1, 2026, portion of that foreign taxable year. 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. See § 1.1503(d)–7(c)(46) for an example illustrating items that are taken into account in determining disregarded payment income or disregarded payment loss.

(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)(5)(ii)(D) of this section over the sum of the items described in paragraph (d)(5)(ii)(C) of this section.

(B) *Disregarded payment loss.* Subject to the de minimis rule set forth in paragraph (d)(6)(vii) of this section, a 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)(5)(ii)(C) of this section over the sum of the items described in paragraph (d)(5)(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)(5)(ii)(C) to the extent that it satisfies all of the requirements set forth in paragraphs (d)(5)(ii)(C)(*1*) through (*3*) of this section. In addition, an item of a disregarded payment entity described in paragraph (d)(5)(i)(A) of this section is described in this paragraph (d)(5)(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 disregarded payment 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 or between disregarded entities with the same tax owner (for example, a payment by a disregarded entity to its tax owner or to another disregarded entity owned by its tax owner, a payment from a dual resident corporation or partnership to a disregarded entity it owns, or a payment from the home office of a foreign branch to a disregarded entity the home office owns that is attributable to the foreign branch).

(*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)(5)(ii)(D) to the extent that it satisfies all of the requirements set forth in paragraphs (d)(5)(ii)(D)(*1*) through (*3*) of this section.

(*1*) Under the relevant foreign tax law, the disregarded payment 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 or between disregarded entities with the same 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 of its tax owner, a payment to a dual resident corporation or partnership from a disregarded entity it owns, or a payment from a disregarded entity to the home office of a foreign branch that is attributable to the foreign branch).

(*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.

(E) *Translation into U.S. dollars.* The amount of disregarded payment income or disregarded payment loss with respect to a foreign taxable year of a disregarded payment entity is translated into U.S. dollars using the yearly average exchange rate (within the meaning of § 1.987–1(c)(2)) for that foreign taxable year.

(F) *Royalties under pre-August 6, 2024 licenses excluded.* Royalties paid or accrued pursuant to a license agreement entered into before August 6, 2024, are not taken into account when

determining the amount of disregarded payment income or disregarded payment loss. The preceding sentence ceases to apply with respect to any such agreement upon the significant modification of any terms of the agreement, such as a change in the licensor or licensee or a significant modification of the rights in consideration for which the royalties are paid. In such case, any amounts paid or accrued on or after the date of the significant modification are taken into account when determining the amount of disregarded payment income or disregarded payment loss. Termination of a license agreement and re-entry into a license agreement between the same parties and with the same terms (other than the term governing the period covered by the agreement), an extension of the period covered by a license agreement without modification of other terms, or an alteration of a legal right or obligation that occurs by operation of the terms of the license agreement (for example, where the license agreement provides for updating the royalty based on updated transfer pricing studies), will not be considered a significant modification of the first license agreement. For purposes of this paragraph (d)(5)(ii)(F), a combined disregarded payment entity is treated as a single licensor or licensee, as the case may be.

(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)(6)(iii) 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 *foreign tax resident* means a tax resident (within the meaning of § 1.267A–5(a)(23)(i)) of a foreign country.

(vii) The term *related* has the meaning provided in this paragraph (d)(5)(vii). A person is related to a DPE owner if the person is a related person within the meaning of section 954(d)(3) and the regulations thereunder, determined by treating the person as the ''controlled foreign corporation'' referred to in that section. In addition, for purposes of determining relatedness, a disregarded entity is treated as a corporation.

(viii) 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.

(ix) The term *DPE owner* has the meaning provided in paragraph (d)(1) of this section, and includes any successor to the corporation described paragraph (d)(1) of this section.

(6) *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, or interests in which are directly or indirectly owned, either by the same DPE owner or by DPE owners that are members of the same consolidated group. However, this paragraph (d)(6)(i) does not apply with respect to a dual resident corporation treated as a disregarded payment entity pursuant to paragraph (d)(5)(i)(D) 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)(6)(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 DPE owner of a disregarded payment entity indirectly owns through a partnership less than all the interests in that disregarded payment entity, then the rules of this paragraph (d) are applied based on the DPE owner's proportionate interest in the disregarded payment entity. In such a case, as to the DPE 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 DPE owner 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 DPE owner's taxable year during which the DPE owner, or a person related to the DPE owner, no longer owns directly or indirectly any of the interests in the disregarded payment entity, 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 DPE owner ceases to be subject to the rules of paragraph (d) of this section with respect to the disregarded payment loss; thus, for example, after the end of such taxable year the DPE 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. The DPL certification period will also terminate with respect to a disregarded payment loss upon a DPE owner's inclusion of the DPL inclusion amount attributable to the disregarded payment loss.

(iv) *Agent for a consolidated group.* If a DPE owner is a member of a consolidated group, see § 1.1502–77 for agent of the group rules (generally treating the common parent as the agent of its 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(a)(10).

(vi) *DPL inclusion amount and suspended deduction not taken into account for dual consolidated loss purposes.* A DPL inclusion amount included in the gross income of a DPE owner, and any allowed amount of a suspended deduction attributable to a DPL inclusion amount, are 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).

(vii) *De minimis rule.* A disregarded payment entity will be deemed to have no disregarded payment loss with respect to a foreign taxable year in which the conditions in paragraphs (d)(6)(vii)(A) and (B) of this section are satisfied.

(A) The items that compose the disregarded payment loss are incurred in connection with the conduct of an active trade or business (within the meaning of § 1.367(a)–2(d)(2) and (3), but for this purpose treating the disregarded payment entity as the foreign corporation referenced therein) carried on by the disregarded payment entity. For purposes of the preceding sentence, the determination of whether items are incurred in connection with an active trade or business is made under § 1.367(a)–2(d)(5), but for this purpose by treating the property received by the disregarded payment entity pursuant to the arrangement that gave rise to the item (such as cash or the rights to use the intangible property) as the property described in such section.

(B) The amount of the disregarded payment loss is less than the lesser of $3 million or 10 percent of the aggregate amount of all the items of the disregarded payment entity for the foreign taxable year that satisfy the condition described in paragraph (d)(5)(ii)(C)(*1*) of this section. For this purpose, the items of the disregarded payment entity may include, for example, items that are regarded for both U.S. and foreign tax purposes, or foreign law items that if regarded for U.S. tax purposes would not be treated as interest, a structured payment, or a royalty within the meaning of § 1.267A–5(a)(12), (b)(5)(ii), or (a)(16), respectively.

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(e) *Special rules for filings.* * * *

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(f) *Anti-avoidance rule*—(1) *In general.* Except to the extent provided in paragraph (f)(2) of this section, if a transaction, series of transactions, plan, or arrangement is engaged in with a view to avoid the purposes of the rules in this section and §§ 1.1503(d)–2 through 1.1503(d)–8, 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) is engaged in with a view to avoid the purposes of this section and §§ 1.1503(d)–2 through 1.1503(d)–8 only if it results in a double deduction or similar outcome (for example, by putting an item of deduction or loss that composes (or would compose) a dual consolidated loss to both a domestic use and a foreign use (determined under §§ 1.1503(d)–2 and 1.1503(d)–3, respectively) or putting a foreign law item of deduction or loss that is disregarded for U.S. tax purposes to a foreign use). The 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) through (45) for examples illustrating the application of this paragraph (f).

(2) *Exceptions.* The anti-avoidance rule in paragraph (f)(1) of this section does not apply to a reduction or elimination of a dual consolidated loss solely by reason of intercompany transactions as described in § 1.1502–13, items of income arising from the ownership of stock and taken into account under § 1.1503(d)–5(b)(1) or (c)(4)(iv), or the attribution to a hybrid entity separate unit or an interest in a transparent entity of items that have not been and will not be reflected on the entity's books and records. The anti-avoidance rule in paragraph (f)(1) of this section also does not apply with respect to the application of the dual consolidated loss rules to the GloBE Model Rules, or to cause a foreign use of a dual consolidated loss to occur solely in a period before the taxable year in which such loss was incurred.

* * * * *

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

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

■ 2. Adding paragraph (e)(4).

The revision and addition read as follows:

§ 1.1503(d)–3 Foreign use.

* * * * *

(c) * * *

(3) *Deemed ordering rule*—(i) *In general.* This paragraph (c)(3) applies if the losses or deductions composing the dual consolidated loss are made available under the laws of a foreign country both in part to offset income or gain that would constitute a foreign use and in part to offset income or gain that would not constitute a foreign use. In such a case, the losses or deductions shall be deemed to be made available to offset the income or gain that does not constitute a foreign use, to the extent of such income or gain, before being considered to be made available to offset the income or gain that does constitute a foreign use. See § 1.1503(d)–7(c)(11) (*Example 11*).

(ii) *Limitation.* For purposes of applying this paragraph (c)(3), items of income or gain are taken into account only to the extent such items are or would be taken into account in determining the amount of income or dual consolidated loss under § 1.1503(d)–5(b) or (c). Thus, for example, this paragraph does not apply with respect to items of income or gain that are otherwise disregarded for U.S. tax purposes. But see § 1.1503(d)–1(d)(3)(i), which provides that when applying the principles of this rule for purposes of the disregarded payment loss rules, the only relevant items are those that are or would be taken into account for purposes of determining a disregarded payment loss or disregarded payment income.

* * * * *

(e) * * *

(4) *Exception for disregarded payment losses.* Paragraph (e)(1) of this section will not apply so as to deem a foreign use of a disregarded payment loss (within the meaning of § 1.1503(d)–1(d)(5)(ii)(B)).

■ **Par. 4.** Section 1.1503(d)–7 is amended by:

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

■ 2. Revising the (c)(11) paragraph heading;

■ 3. Removing the last sentence in paragraph (c)(11)(i);

■ 4. In the first sentence of paragraph (c)(11)(ii), removing the language "§ 1.1503(d)–3(c)(3)" and adding in its place the language "§ 1.1503(d)–3(c)(3)(i)".

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

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

■ 7. Adding paragraphs (c)(42) through (c)(46).

The revisions and additions read as follows:

§ 1.1503(d)–7 Examples.

* * * * *

(c) * * *

(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. * * *

* * * * *

(11) *Example 11. No foreign use—deemed ordering rule.* ***

* * * * *

(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. * * *

* * * * *

(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 rules—triggering event resulting in DPL inclusion amount and suspended deduction*—(i) *Facts.* P owns DE1X, and DE1X owns FSX. 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. At the end of year 1, DE1X extinguishes the note by repaying the outstanding principal. In year 2, P enters into a licensing arrangement with DE1X pursuant to which P makes a $60x payment to DE1X in each of years 2 and 3. 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 a royalty within the meaning of § 1.267A–5(a)(16). Under Country X tax law, the $60x is a royalty and included in the income of DE1X in years 2 and 3.

(ii) *Result.*—(A) *Year 1.* Because P owns all of the interests in DE1X, a disregarded entity, P is a DPE owner. See § 1.1503(d)–1(d)(1). In addition, DE1X, a disregarded payment entity with respect to P, incurs a $100x disregarded payment loss with respect to its Country X taxable year for year 1. See § 1.1503(d)–1(d)(5)(i)(A) and (d)(5)(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)(5)(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) 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 DE1X were a foreign corporation, and the amount were interest income paid by the foreign corporation to P. See § 1.1503(d)–1(d)(2)(iv)(A). The result would be the same if DE1X recognized income in year 1 that was regarded for both U.S. and Country X tax purposes, or if P made payments (other than interest, structured payments, or royalties) to DE1X that were disregarded for U.S. tax purposes but regarded for Country X tax purposes. See § 1.1503(d)–1(d)(3)(i) (describing the application of the principles of the deemed ordering rule in § 1.1503(d)–3(c)(3)).

(B) *Years 2 and 3.* In year 2, P establishes a suspended deduction of $100x related to the year 1 DPL inclusion amount. See § 1.1503(d)–1(d)(1) and (d)(2)(ii). In each of years 2 and 3, DE1X derives $60x of disregarded payment income with respect to its Country X taxable year. See § 1.1503(d)–1(d)(5)(ii)(A). For year 2, P is allowed a $60x deduction with respect to the suspended deduction, and $40x remains suspended. See § 1.1503(d)–1(d)(2)(ii). For year 3, P is allowed a $40x deduction with respect to the suspended deduction. See *id.* Thus, in years 2 and 3 P is allowed a $60x deduction and $40x deduction, respectively, with respect to the suspended deduction relating to the year 1 DPL inclusion amount. The deductions are treated as interest deductions the source and character of which are determined in the same manner as the income for the DPL inclusion amount to which they relate. See § 1.1503(d)–1(d)(2)(iv)(B). At the end of year 3, the DPL cumulative register is $20x (that is, the $120x of disregarded payment income for years 2 and 3, less the $100 of DPL cumulative register that is used under § 1.1503(d)–1(d)(2)(ii) in years 2 and 3). See § 1.1503(d)–1(d)(2)(iii).

(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. DE1X and FSX file a consolidated tax return for Country X tax purposes such that deductions and losses of DE1X are available to offset income of 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 the rules under §§ 1.1503(d)–1 through 1.1503(d)–8 by eliminating what would otherwise be a dual consolidated loss and obtaining a double deduction outcome, 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 P'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 the rules under §§ 1.1503(d)–1 through 1.1503(d)–8, and the transfer would otherwise result in a double deduction outcome (that is, in effect putting DE1X's items of deduction or loss that would compose a dual consolidated loss to both a domestic use and a foreign use), the anti-avoidance rule in § 1.1503(d)–1(f)(1) applies. As a result, the income or gain that P takes into account from the U.S. business operations (held indirectly through DE1X) is not 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 the taxable income determined by taking such items into account.

(44) *Example 44. Disallowed interest deductions*—(i) *Facts.* P owns S. S owns DE1X, a disregarded entity and, thus, is a DPE owner. See § 1.1503(d)–1(d)(1). DE1X owns FSX. DE1X and FSX file a consolidated tax return for Country X tax purposes such that deductions and losses of DE1X are available to offset income of FSX. With a view to avoid the purposes of the rules under §§ 1.1503(d)–1 through 1.1503(d)–8, and obtain a double deduction or similar

outcome, P transfers cash to DE1X in exchange for an interest-bearing note. Under the terms of the note, payments of interest are made in cash or, at the option of DE1X, in stock of S. In year 1, DE1X accrues $100x of interest expense under the note. The taxpayer takes the position that for U.S. tax purposes, the interest expense deductions are disallowed under section 163(l) because DE1X has the option to pay the interest with S stock. Further, because S's interest expense deductions on the note held by P are disallowed, the taxpayer takes the position that P's interest income on the loan is treated as tax-exempt income under the intercompany transaction rules in § 1.1502–13. In year 1, DE1X is allowed a $100x interest expense deduction for Country X tax purposes; the $100x deduction is available to offset FSX's income for Country X tax purposes.

(ii) *Result.* DE1X issued the note to P in exchange for cash with a view to avoid the purposes of §§ 1.1503(d)–1 through 1.1503(d)–8. Moreover, under the taxpayer's position, the issuance would otherwise result in a double deduction or similar outcome (that is, a foreign use of DE1X's $100x interest expense deduction where P does not recognize a corresponding income inclusion for U.S. tax purposes). Accordingly, the anti-avoidance rule in § 1.1503(d)–1(f)(1) applies. As a result, adjustments are made such that the $100x interest expense deduction is treated as a disregarded payment loss of DE1X, a disregarded payment entity. This is the case even though the $100x interest payment is not disregarded for U.S. tax purposes as a transaction between a disregarded entity and its tax owner or between disregarded entities with the same tax owner under § 1.1503(d)–1(d)(5)(ii)(C)(*2*). Because the $100x disregarded payment loss is made available under the Country X consolidation regime to offset income of FSX, a foreign corporation, a foreign use triggering event (within the meaning of § 1.1503(d)–1(d)(3)(i)) occurs. As a result, S includes in income a $100x DPL inclusion amount in year 1 and establishes a suspended deduction of $100x in year 2. See § 1.1503(d)–1(d)(1), (d)(2)(i), and (d)(2)(ii).

(45) *Example 45. Restructuring to avoid the application of the DPL rules*—(i) *Facts.* P owns DE1X and S. DE1X owns FSX. DE1X and FSX file a consolidated tax return for Country X tax purposes such that deductions and losses of DE1X are available to offset income of FSX. P holds an interest-bearing note issued by DE1X. For U.S. tax purposes, interest accrued and paid on the note is disregarded. For Country X tax purposes, DE1X is allowed a $100x interest expense deduction each year for interest accrued under the note. At the end of year 1, and with a view to avoid the application of the disregarded payment loss rules under § 1.1503(d)–1(d) in year 2, P transfers the note to S. In year 2, DE1X is allowed a $100x interest expense deduction for Country X tax purposes. For U.S. tax purposes, the $100x interest expense deduction in year 2 gives rise to a dual consolidated loss attributable to P's interest in DE1X, a hybrid entity separate unit, and that loss is subject to the domestic use limitation rule of § 1.1503(d)–4(b).

(ii) *Result.* Although P transferred the note to S with a view to avoid the application of the disregarded payment loss rules under § 1.1503(d)–1(d), the anti-avoidance rule in § 1.1503(d)–1(f)(1) does not apply with respect to the transfer. This is because the resulting year 2 $100x dual consolidated loss is subject to the domestic use limitation rule of § 1.1503(d)–4(b) (or the terms of a domestic use agreement, if a domestic use election were to be made) and thus cannot be put to both a domestic use and a foreign use (that is, it does not result in a double deduction or similar outcome). The same result would obtain if, instead of P transferring the note to S at the end of year 1, DE1X extinguished the note at the end of year 1 such that there are no disregarded payments in year 2 and, thus, no double non-taxation outcome.

(iii) *Alternative facts.* The facts are the same as in paragraph (c)(45)(i) of this section, except that P does not transfer the note to S in year 1. Instead, with a view to prevent a foreign use of a disregarded payment loss attributable to DE1X, at the end of year 1 FSX distributes all its property to DE1X in a complete liquidation described in section 332. The anti-avoidance rule in § 1.1503(d)–1(f)(1) does not apply because the disregarded payment loss is not put to a foreign use (that is, there is no double deduction or similar outcome).

(46) *Example 46. Disregarded payment loss rules—scope*—(i) *Facts.* P owns DE1X. DE1X owns FBZ. FBZ is a foreign branch, within the meaning of § 1.1503(d)–1(d)(5)(iv), located in Country Z. DE1X makes a $10x payment to P, which, under the laws of Country Z, gives rise to a $10x deduction allowable to FBZ. If such payment were regarded for U.S. tax purposes, it would be interest within the meaning of § 1.267A–5(a)(12). In addition, under the laws of Country Z, FBZ is allowed a $60x interest deduction for an accrual or other transaction between FBZ and DE1X, and if such item were regarded for U.S. tax purposes, it would be interest within the meaning of § 1.267A–5(a)(12).

(ii) *Result.* P is a DPE owner because it owns DE1X, a disregarded entity. See § 1.1503(d)–1(d)(1). As such, P determines disregarded payment income or disregarded payment loss of DE1X, a disregarded payment entity described in § 1.1503(d)–1(d)(5)(i)(A), and of FBZ, a disregarded payment entity described in § 1.1503(d)–1(d)(5)(i)(B). See § 1.1503(d)–1(d)(1). The payment from DE1X to P is disregarded for U.S. tax purposes as a transaction between a disregarded entity (DE1X) and its tax owner (P) and therefore satisfies the condition in § 1.1503(d)–1(d)(5)(ii)(C)(*2*). The payment also satisfies the conditions described in § 1.1503(d)–1(d)(5)(ii)(C)(*1*) and (*3*) because FBZ is allowed a deduction under Country Z law for a payment that, if regarded for U.S. tax purposes, would be interest within the meaning of § 1.267A–5(a)(12). As such, the $10x deduction attributable to the payment from DE1X to P is taken into account in determining whether FBZ has disregarded payment income or a disregarded payment loss under § 1.1503(d)–1(d)(5)(ii)(A) and (B), respectively. The $60x item of deduction allowed to FBZ, however, does not satisfy the condition described in § 1.1503(d)–1(d)(5)(ii)(C)(*2*), because the accrual or other transaction giving rise to the deduction is not between a disregarded entity and its tax owner (here, P), or between disregarded entities with the same tax owner. Accordingly, the $60x item of deduction is not taken into account in determining whether FBZ has disregarded payment income or a disregarded payment loss. The result would be the same with respect to the $60x deduction allowed to FBZ under the laws of Country Z if, instead of P owning FBZ indirectly through DE1X, P owned FBZ directly and the accrual or other transaction giving rise to the deduction is between FBZ and P.

* * * * *

■ **Par. 5.** Section 1.1503(d)–8 is amended by:

■ 1. Revising the section heading; and

■ 2. Adding paragraphs (b)(9) through (17).

The revision and additions read as follows:

§ 1.1503(d)–8 Applicability dates.

* * * * *

(b) * * *

(9) [Reserved].

(10) [Reserved].

(11) *Disregarded payment loss rules.* Section 1.1503(d)–1(d) applies to taxable years beginning on or after January 1, 2026. See also § 301.7701–2(e)(10) of this chapter (applicability dates for the entity classification provisions relevant to the disregarded payment loss rules).

(12) [Reserved].

(13) [Reserved].

(14) [Reserved].

(15) *Anti-avoidance rule.* Section 1.1503(d)–1(f) applies to dual consolidated losses incurred in taxable years ending on or after August 6, 2024, and to disregarded payment losses in taxable years beginning on or after January 1, 2026.

(16) [Reserved].

(17) *Deemed ordering rule.* Section 1.1503(d)–3(c)(3) applies to dual consolidated losses incurred in taxable years beginning on or after January 1, 2026, and to disregarded payment losses in taxable years beginning on or after January 1, 2026. For the application of the deemed ordering rule to dual consolidated losses incurred in taxable years beginning before January 1, 2026, but on or after April 18, 2007, see § 1.1503(d)–3(c)(3) as contained in 26 CFR part 1 revised as of April 1, 2024.

(18) *Exception to mirror legislation rule for disregarded payment losses.* Section 1.1503(d)–3(e)(4) applies to taxable years beginning on or after January 1, 2026.

PART 301—PROCEDURE AND ADMINISTRATION

■ **Par. 6.** The authority citation for part 301 is amended by adding an entry for § 301.7701–2 to read as follows:

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

* * * * *

Section 301.7701–2 also issued under 26 U.S.C. 7701.

* * * * *

■ **Par. 7.** Section 301.7701–2 is amended by:

■ 1. In the last sentence of paragraph (a), removing the language ''(vi)'' and adding in its place the language ''(vii)'';

■ 2. Adding paragraph (c)(2)(vii); and

■ 3. Adding paragraph (e)(10).

The additions read as follows:

§ 301.7701–2 Business entities; definitions.

* * * * *

(c) * * *

(2) * * *

(vii) *Special rules for certain disregarded payments*—(A) *Disregarded payment loss rules.* To the extent provided in § 1.1503(d)–1(d) of this chapter, certain payments involving a business entity that, under paragraph (c)(2)(i) of this section is otherwise disregarded as an entity separate from its owner, are in effect taken into account as if the entity were regarded and the deduction was denied, and therefore give rise to an income inclusion, and corresponding suspended deduction, to the entity's owner.

(B) *Non-application of the sixty-month limitation.* If an eligible entity that is disregarded as an entity separate from its owner would become a disregarded payment entity (within the meaning of § 1.1503(d)–1(d)(5)(i)(A) of this chapter) when this paragraph (c)(2)(vii) applies, the sixty-month limitation under § 301.7701–3(c)(1)(iv) does not apply with respect to an election by such eligible entity to change its classification to an association effective before January 1, 2026 (such that it would not become a disregarded payment entity).

* * * * *

(e) * * *

(10) Paragraph (c)(2)(vii) of this section (special rules for certain disregarded payments) applies to taxable years beginning on or after January 1, 2026, except that paragraph (c)(2)(vii)(B) of this section (non-application of sixty-month limitation) applies as of August 6, 2024.

Douglas W. O'Donnell,

Deputy Commissioner.

Approved: January 2, 2025.

Aviva R. Aron-Dine,

Deputy Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2025–00318 Filed 1–10–25; 11:15 am]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1992

[Docket Number: OSHA–2022–0005]

RIN 1218–AD37

Procedures for the Handling of Retaliation Complaints Under the Anti-Money Laundering Act of 2020 (AMLA)

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Interim final rule; request for comments.

SUMMARY: This document provides the interim final text of regulations governing the anti-retaliation provisions of the Anti-Money Laundering Act of 2020 (AMLA or the Act). This rule establishes procedures and timeframes for the handling of retaliation complaints under AMLA, including procedures and timeframes for complaints to the Occupational Safety and Health Administration (OSHA), investigations by OSHA, appeals of OSHA determinations to an administrative law judge (ALJ) for a hearing de novo, hearings by ALJs, review of ALJ decisions by the Administrative Review Board (ARB) (acting on behalf of the Secretary of Labor (Secretary)), and judicial review of the Secretary's final decision. It also sets forth the Secretary's interpretations of the AMLA anti-retaliation provision on certain matters.

DATES: This interim final rule is effective on January 14, 2025. Comments and additional materials must be submitted (post-marked, sent or received) by March 17, 2025.

ADDRESSES: Submit comments by the following method:

Electronically: You may submit comments and attachments electronically at: *https://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Docket: To read or download comments or other material in the docket, go to *https://www.regulations.gov*. Documents in the docket are listed in the *https://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for assistance in locating docket submissions.

Instructions: All submissions must include the agency name and the OSHA docket number for this **Federal Register** document (OSHA–2022–0005). OSHA will place comments and requests to speak, including personal information, in the public docket, which may be available online. Therefore, OSHA cautions interested parties about submitting personal information such as Social Security numbers and birthdates. For further information on submitting comments, see the ''Public Participation'' heading in the section of this document titled **SUPPLEMENTARY INFORMATION.**

Extension of comment period: Submit requests for an extension of the comment period on or before January 29, 2025 to the Directorate of