

## Part III - Administrative, Procedural, and Miscellaneous

### Proposed Removal of the Disregarded Payment Loss Rules and Certain Recent Changes to the Dual Consolidated Loss Rules; Extension of Transition Relief

Notice 2025-44

#### SECTION 1. PURPOSE

This notice announces that the Department of Treasury (“Treasury Department”) and the Internal Revenue Service (“IRS”) intend to issue proposed regulations that would remove (i) the disregarded payment loss (“DPL”) rules under §1.1503(d)-1(d) and (ii) recent modifications to the dual consolidated loss (“DCL”) rules under section 1503(d) relating to the deemed ordering rule under §1.1503(d)-3(c)(3). Additionally, the proposed regulations would extend the transition relief pertaining to the application of the dual consolidated loss (“DCL”) rules under section 1503(d) to certain types of taxes covered by the so-called “GloBE Model Rules” described in “Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two).”<sup>1</sup> Finally, this notice requests comments on certain aspects of the DCL rules.

#### SECTION 2. BACKGROUND

The DCL rules under section 1503(d)(1) generally provide that a DCL of a

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<sup>1</sup> Org. for Econ. Coop. & Dev. [OECD], *Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two)* (Dec. 14, 2021), [https://www.oecd-ilibrary.org/taxation/tax-challenges-arising-from-digitalisation-of-the-economy-global-anti-base-erosion-model-rules-pillar-two\\_782bac33-en](https://www.oecd-ilibrary.org/taxation/tax-challenges-arising-from-digitalisation-of-the-economy-global-anti-base-erosion-model-rules-pillar-two_782bac33-en). 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 notice, but not defined herein, have the meanings ascribed to such terms under the GloBE Model Rules.

domestic corporation cannot reduce the taxable income of a domestic affiliate (a “domestic use”). See §§1.1503(d)-2 and 1.1503(d)-4(b). Similar rules under section 1503(d)(3) apply to “separate units” of domestic corporations, defined as certain foreign branches and interests in hybrid entities. See §1.1503(d)-1(b)(4)(i). A DCL includes a net operating loss of a dual resident corporation or the net loss of a domestic corporation attributable to a separate unit. See §1.1503(d)-1(b)(5).

Exceptions to the general prohibition against the domestic use of a DCL include a “domestic use election,” by which the taxpayer certifies that there has not been and will not be a “foreign use” of the DCL during a certification period. See §1.1503(d)-6(d). If a foreign use (or other “triggering event”) occurs during the certification period, the DCL must be recaptured and an interest charge is imposed. See §1.1503(d)-6(e)(1). Pursuant to the “all or nothing” principle, any amount of the DCL being put to a foreign use generally would cause the entire amount of the DCL to be recaptured and reported as income. See §1.1503(d)-6(e)(1). A foreign use occurs when any portion of the DCL is made available under the income tax laws of a foreign country to offset or reduce, directly or indirectly, the income of a foreign corporation or the direct or indirect owner of a hybrid entity that is not a separate unit. See §1.1503(d)-3(a).

On December 11, 2023, the 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 the GloBE Model Rules 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 generally 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), with a correction published in the Federal Register on September 3, 2024 (89 FR 71214) (the “2024 proposed regulations”). The 2024 proposed regulations included the DPL rules, which would require domestic corporations to include amounts related to certain disregarded payments in income for U.S. tax purposes. Additionally, the 2024 proposed regulations would provide guidance on the interaction of the DCL rules and GloBE Model Rules and extend and broaden the transition relief announced in Notice 2023-80. In particular, the 2024 proposed regulations would provide that the DCL rules 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). Finally, the 2024 proposed regulations included an anti-avoidance rule that would apply with respect to both DPLs and DCLs. See proposed §1.1503(d)-1(f).

On January 14, 2025, the Treasury Department and the IRS published TD 10026 in the Federal Register (90 FR 3003) (the “2025 final regulations”), which finalized the proposed DPL rules and the proposed anti-avoidance rule under §1.1503(d)-1(f). In response to comments on the 2024 proposed regulations, the 2025 final regulations also made two modifications to the rule under §1.1503(d)-3(c)(3) (referred to as the

"deemed ordering rule" in the 2025 final regulations), which applies for purposes of both the DCL and DPL rules. The first modification eliminated the restriction limiting the application of the rule to situations in which foreign law does not provide rules for determining which income is offset by the losses or deductions. The second modification provides that income or gain is taken into account only if it would be taken into account in determining income or a DCL and, therefore, income or gain otherwise disregarded for U.S. tax purposes is not taken into account. See §1.1503(d)-3(c)(3)(ii).

The DPL rules apply for taxable years beginning on or after January 1, 2026. The anti-avoidance rule in §1.1503(d)-1(f) applies to DCLs incurred in taxable years ending on or after August 6, 2024, and to DPLs in taxable years beginning on or after January 1, 2026. The modifications to the deemed ordering rule apply to DCLs and DPLs incurred in taxable years beginning on or after January 1, 2026.

The 2025 final regulations did not include the proposed guidance on the interaction of the DCL rules and GloBE Model Rules, but the preamble to the 2025 final regulations announced that the DCL transition relief provided in the 2024 proposed regulations would be further extended, when finalized. See Additional Transition Relief With Respect to the GloBE Model Rules in TD 10026 (90 FR 3003, 3012-3014). Specifically, the transition relief set forth in the 2024 proposed regulations would be extended to apply with respect to DCLs incurred in taxable years beginning before August 31, 2025.

### SECTION 3. REGULATIONS TO BE ISSUED

*.01 Removal of the DPL rules*

Following the publication of the 2025 final regulations, the Treasury Department and the IRS received feedback recommending the removal of the DPL rules, focusing on the complexity, uncertainty, and costs of complying with the DPL rules and of unwinding existing structures in response to the DPL rules. The Treasury Department and the IRS share these concerns.

In addition, the feedback questioned the authority for the DPL rules, asserting that the DPL rules are a significant departure from longstanding principles of the Code, are inconsistent with the statute, and conflict with congressional intent. The comments stated that section 1503(d) is properly limited to regarded items and does not impose income inclusions as a result of disregarded payments. The feedback asserted that the regulations under section 7701 generally do not create income inclusions with respect to disregarded payments that do not otherwise exist under the Code.

In response to the feedback, the Treasury Department and the IRS have further considered the interaction of section 1503(d) and the regulations under section 7701(a) in the context of disregarded payments that are deductible under foreign law. In light of this further consideration, the Treasury Department and the IRS are of the view that the interaction of these provisions should not be construed to cause such disregarded payments to give rise to income inclusions as set forth under the DPL rules.

Accordingly, the Treasury Department and the IRS intend to issue proposed regulations that would remove the DPL rules. In furtherance of the removal of the DPL rules, the

proposed regulations would also include an exception to the anti-avoidance rule of §1.1503(d)-1(f) so that the rule does not apply to structures that would have been addressed by the DPL rules.

*.02 Removal of the modifications to the deemed ordering rule*

The 2025 final regulations revised the deemed ordering rule under §1.1503(d)-3(c)(3), in part, to coordinate the application of the DPL and DCL rules, and such coordination will no longer be necessary once the DPL rules are withdrawn. Further, the Treasury Department and the IRS are studying the application and scope of the deemed ordering rule (including in connection with the study of the treatment of disregarded payments discussed in section 5 of this notice). Thus, the forthcoming proposed regulations will propose to remove the revisions to the deemed ordering rule in the 2025 final regulations.

*.03 Extension of transition relief on application of DCL rules to GloBE Model Rules*

The Treasury Department and the IRS are of the view that an extension of the transition relief with respect to the interaction of the DCL rules and the GloBE Model Rules is appropriate to allow for further consideration of comments received in response to the 2024 proposed regulations, to allow for consideration of further developments at the OECD, and to provide taxpayers more certainty. Accordingly, the forthcoming proposed regulations will propose to further extend the relief set forth in proposed §1.1503(d)-8(b)(12) to apply with respect to DCLs incurred in taxable years beginning before January 1, 2028.

*.04 Applicability dates*

The proposed regulations to be issued removing the DPL rules described in section 3.01 of this notice would apply to taxable years beginning on or after January 1, 2026.

The proposed regulations to be issued removing the changes to the deemed ordering rule described in section 3.02 of this notice would apply to DCLs incurred in taxable years beginning on or after January 1, 2026.

SECTION 4. RELIANCE

Taxpayers may rely on section 3 of this notice until the date the proposed regulations are published in the Federal Register.

SECTION 5. REQUEST FOR COMMENTS AND CONTACT INFORMATION

The Treasury Department and the IRS are studying (1) potential revisions to the “all or nothing” principle, taking into account administrability concerns, and (2) whether, and, if so, how disregarded items should be taken into account for purposes of the DCL rules (for example, in a manner similar to that set forth in §1.904-4(f) for determining foreign branch category income), and request comments on these issues.

Comments should be submitted by October 21, 2025. Comments may be submitted electronically via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (type IRS-2025-0171 in the search field on the [regulations.gov](http://www.regulations.gov) homepage to find this notice and submit comments). Written comments may be submitted to the Office of Associate Chief Counsel (International), Attention: Mark Terrell, Internal Revenue

Service, IR-4619, 1111 Constitution Avenue, NW, Washington, DC 20224. Comments will be available for public inspection and copying.

The author of this notice is the Office of Associate Chief Counsel (International). However, other personnel from the Treasury Department and the IRS participated in its development. For further information concerning this notice, please contact (202) 317-5443.