

Dual Consolidated Losses Treated in Final Regulations

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Final regulations have been issued (TD 8434) dealing with Section 1503(d), which generally prohibits a dual resident corporation from using a dual consolidated loss to offset the taxable income of any domestic corporate affiliate. Proposed

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regulations concerning this restriction were issued in 1989, and the final regulations adopt many of those provisions. However, in several respects the rules have been liberalized.

Stand by Me

The proposed regulations included a stand-alone requirement applicable to dual resident corporations. The final regulations eliminate this concept as a prerequisite to obtaining relief from the dual consolidated loss restrictions. Instead, they adopt an actual-use standard for both dual resident corporations and separate units. When a triggering event occurs, the dual resident consolidated loss must be recaptured in the year of the triggering event, subject to an interest charge. Amended returns need not be filed.

The final regulations also provide that if a dual resident corporation transfers its assets to another corporation in a transaction subject to Section 381, and the acquiring corporation is a dual resident corporation of the same foreign country, or a domestic corporation that carries on the business activities of the transferor corporation as a separate unit, any carryover losses of the transferor can be used to offset any income generated by the transferee. Where a domestic corporation transfers a separate unit to another domestic corporation in a transaction subject to Section 381, the income generated by the separate unit following the transfer may be offset by the carryover losses of the separate unit.

No Partnership Relief

Although commentators to the proposed regulations had

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asked that the rule that partnerships interests are to be treated as separate units should be limited in the final rules, such relief was not granted. Because of concern over supposed abuses, the final regulations do not take this approach, although the Service indicated that it is considering the treatment of loss allocations where a special allocation results in a loss being used to offset one stream of income for U.S. tax purposes and a separate stream of income for foreign tax purposes.

Foreign To Foreign

The final regulations provide that, for purposes of the regulations, the use of a dual resident corporation's losses, expenses, or deductions under the laws of a foreign country to offset the income of another dual resident corporation within the same consolidated group is not considered a use of the losses, expenses, or deductions to offset the income of another person under the laws of a foreign country. In the absence of applicable rules under foreign law, the regulations provide rules for the order in which losses, expenses, or deductions of the dual resident corporation will be deemed to offset the income of the other dual resident corporation before offsetting another's income.

Relief Offered

One of the substantial changes from the proposed regulations concerns the manner in which relief from the loss limitation rules can be obtained. A uniform set of relief rules now applies to both dual resident corporations and separate units.

Effective Dates

While the final regulations are generally effective for tax years beginning after 9/30/92, several transition rules apply. ■