[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9710]

RIN 1545-BK50

Foreign Tax Credit Splitting Events

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final Income Tax Regulations with respect to a provision of the Internal Revenue Code (Code) that addresses situations in which foreign income taxes have been separated from the related income. These regulations are necessary to provide guidance on applying the statutory provision, which was enacted as part of legislation commonly referred to as the Education Jobs and Medicaid Assistance Act (EJMAA) on August 10, 2010. These regulations affect taxpayers claiming foreign tax credits or deducting foreign income taxes.

DATES: Effective date: These regulations are effective on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Applicability dates: For dates of applicability, see §§1.704-1(b)(1)(ii)(b)(3), 1.909-1(e), 1.909-2(c), 1.909-3(c), 1.909-4(b), 1.909-5(c), and 1.909-6(h).

FOR FURTHER INFORMATION CONTACT: Suzanne M. Walsh, (202) 317-6936 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

On February 14, 2012, a notice of proposed rulemaking by cross-reference to temporary regulations (REG-132736-11) under sections 909 and 704 of the Code and temporary regulations (TD 9577) (2012 temporary regulations) were published in the **Federal Register** at [77 FR 8184] and [77 FR 8127], respectively.

Section 1.909-6T of the 2012 temporary regulations set forth an exclusive list of splitter arrangements that applied to foreign income taxes paid or accrued by a section 902 corporation in a taxable year beginning on or before December 31, 2010, comprised of reverse hybrid structure splitter arrangements, foreign consolidated group splitter arrangements, group relief or other loss sharing regime splitter arrangements, and hybrid instrument splitter arrangements (pre-2011 splitter arrangements).

For foreign income taxes paid or accrued by any person in a taxable year beginning on or after January 1, 2011, §1.909-5T of the 2012 temporary regulations adopted the same list of splitter arrangements as §1.909-6T, but added partnership inter-branch payment splitter arrangements to the list.

For foreign income taxes paid or accrued by any person in a taxable year beginning on or after January 1, 2012, §1.909-2T adopted the list of splitter arrangements applicable to prior taxable years with certain changes. Because regulations under section 901 were modified for taxable years beginning after February 14, 2012, to address the application of the legal liability rule to combined income regimes, consolidated group splitter arrangements were removed from the list (although §1.909-5T applied the consolidated group splitter arrangement rules to foreign income taxes paid or accrued by any person in a taxable year beginning on or after January 1,

2012, and on or before February 14, 2012). In addition, the definitions of hybrid instrument splitter arrangements and loss-sharing splitter arrangements were expanded.

Sections 1.909-3T and 1.909-6T provided interim mechanical rules for tracking taxes paid or accrued with respect to a splitter arrangement (split taxes) as well as the related income with respect to such taxes.

The 2012 temporary regulations also removed the special rule for inter-branch payments previously set forth in §1.704-1(b)(4)(viii)(d)(3).

A public hearing was not requested and none was held. However, the IRS and the Treasury Department received written comments in response to the notice of proposed rulemaking. After consideration of all the comments, the proposed regulations under section 909 are adopted as amended by this Treasury decision. The revisions are discussed in this preamble. This Treasury decision also adopts the proposed regulations under section 704 without amendment.

Explanation of Revisions and Summary of Comments

I. Splitter arrangements--in general

This Treasury decision makes clarifying changes to certain of the definitions of splitter arrangements in §1.909-2T. It also makes a clarifying change to the interim mechanical rules for tracking split taxes and related income. Apart from this clarifying change, this Treasury decision does not address mechanical issues, which are still under consideration and will be addressed in future guidance.

II. Reverse hybrid splitter arrangements

Section 1.909-2T(b)(1) provides that a splitter arrangement exists with respect to a reverse hybrid entity when a payor pays or accrues foreign income taxes with respect to the income of the reverse hybrid. The split taxes are the taxes paid or accrued with respect to income of the reverse hybrid. The related income with respect to such split taxes is the earnings and profits of the reverse hybrid attributable to the activities of the reverse hybrid that gave rise to the foreign taxable income with respect to which the split taxes were paid or accrued.

A comment indicated that there is confusion regarding the amount of the related income with respect to a reverse hybrid splitter arrangement in the case in which the reverse hybrid subsequently incurs a loss, causing its earnings and profits to fluctuate over multiple taxable years. The final regulations include two new examples at §1.909-2(b)(1)(v) that clarify how to determine the related income amount with respect to split taxes from a reverse hybrid splitter arrangement.

III. Loss-sharing splitter arrangements

Section 1.909-2T(b)(2) provides that a splitter arrangement exists to the extent that the "usable shared loss" of a "U.S. combined income group," which is an individual or corporation and all the entities with which it combines items of income and expense under U.S. federal income tax law, is used to offset foreign taxable income of another U.S. combined income group. A usable shared loss is defined as a shared loss of a U.S. combined income group that could be used under foreign law to offset the group's own income.

A comment requested that the definition of a usable shared loss be clarified to exclude any shared loss that could not be used within the U.S. combined income group

in a current foreign taxable year but that could be used within a group by carrying the loss either forward or back to a different foreign taxable year. The Treasury Department and the IRS agree that the usable shared loss definition should not require a U.S. combined income group to carry forward losses because it will not necessarily be foreseeable whether the group will have sufficient foreign taxable income in a future taxable year to use a loss that cannot be used currently or carried back within the group. It would be too unpredictable to adopt a "wait and see" rule that required a taxpayer to forego the opportunity to use a loss to reduce an affiliate's foreign tax liability in a current (or prior) foreign taxable year based on the speculation that it may be able to use the loss itself in a future foreign taxable year.

It is appropriate, however, that the usable shared loss definition include a shared loss that could be used to offset foreign taxable income of the group in a previous taxable year. Because taxpayers can know in a current foreign taxable year whether a loss can be carried back for foreign law purposes within the U.S. combined income group, they should not be permitted to share such a loss in a way that inappropriately separates foreign income taxes from the related income. Although this may require taxpayers to treat taxes previously paid or accrued as split taxes, this is an acceptable outcome in light of the policy concerns that the loss-sharing splitter rules are intended to address. Furthermore, taxpayers can avoid having to treat taxes as split taxes on a retroactive basis by carrying back the loss. Accordingly, the regulations modify the definition to clarify that a usable shared loss is a shared loss that could be used under foreign tax law to offset income of the U.S. combined income group in a current or previous foreign taxable year.

Another comment recommended that sharing a usable shared loss outside of a U.S. combined income group should give rise to a splitter arrangement only to the extent that the gross amount of such a usable shared loss shared away from the U.S. combined income group exceeds the gross amount of shared losses from other U.S. combined income groups that are received by the group. The Treasury Department and the IRS have determined that it is too burdensome to administer such a netting rule, particularly in light of the fact that the comment did not provide a reason why a U.S. combined income group would seek to use shared losses from another U.S. combined income group while sharing its own usable shared loss outside the group, rather than using its usable shared loss within the group. Therefore, the comment is not adopted.

A further comment recommended that a U.S. combined income group with split taxes resulting from sharing a usable shared loss away from the group in a prior year be treated as receiving a distribution of related income to the extent of any shared loss received by it from a different U.S. combined income group. The Treasury Department and the IRS have determined that it is too burdensome to administer such a rule, which would entail reconciling actual related income accounts with deemed distributions of related income resulting from the receipt of a shared loss from another U.S. combined income group. Therefore, the comment is not adopted.

A question has arisen about when references to "income" in §1.909-2T(b)(2) are intended to refer to income for purposes of U.S. federal income tax law or to income for purposes of foreign tax law. The regulations clarify that the reference to the term "income" of that U.S. combined income group in §1.909-2(b)(2)(v) refers to income for purposes of foreign tax law.

IV. Hybrid instrument splitter arrangements

Section 1.909-2T(b)(3)(i) provides that there is a U.S. equity hybrid instrument splitter arrangement if payments or accruals with respect to a U.S. equity hybrid instrument (i) give rise to foreign income taxes paid or accrued by the owner of such instrument, (ii) are deductible by the issuer under the laws of its foreign jurisdiction, and (iii) do not give rise to income for U.S. federal income tax purposes.

A question has arisen as to whether there is a splitter arrangement if an accrual for foreign law purposes with respect to a U.S. equity hybrid instrument does not give rise to income under U.S. law but a separate payment of the accrued amount is made that gives rise to income under U.S. law equal to all or a portion of the amount of the accrual. The reference to "payments or accruals" created confusion regarding the effect of a payment. The final regulations are clarified to provide that if an accrual under foreign law with respect to a U.S. equity hybrid instrument gives rise to a foreign-law deduction by the issuer, then regardless of whether a payment is made on the instrument, a splitter arrangement exists whenever an accrual gives rise to the imposition of foreign income taxes on the instrument owner without giving rise to income under U.S. federal income tax law. Any actual payment of the accrued amount, whether or not it is made periodically under the terms of the instrument, does not prevent the hybrid instrument from being a splitter arrangement. The payments, however, may be treated as a distribution of related income to the extent provided by §1.909-3 and §1.909-6(d). An example is added at §1.909-2(b)(3)(i)(E) to illustrate the application of the rule.

V. Mechanical rules for tracking related income and split taxes.

A comment recommended that the regulations should generally provide additional mechanical rules for tracking related income. The Treasury Department and the IRS recognize that there are a number of mechanical issues related to tracking related income and split taxes that are not fully addressed in §1.909-6T. Other mechanical issues are under consideration and will be addressed in future guidance.

One comment recommended revising §1.909-6T(e)(3) to provide for the carryover of split taxes in the circumstance in which a payor of split taxes that is a section 902 corporation combines with a section 902 shareholder in a transaction that is described in section 381. Section 1.909-6T(e)(3) provides that split taxes that carry over to a foreign corporation under section 381, §1.367(b)-7, or similar rules retain their character as split taxes and, consequently, the transferee corporation is treated as the payor of the split taxes. That provision does not, however, provide that split taxes carry over to a domestic corporation in the case of a foreign-to-U.S. liquidation or other inbound transaction described in section 381.

The Treasury Department and the IRS have determined that it is not appropriate to expand the scope of §1.909-6T(e)(3) as recommended by the comment. A carryover rule for inbound section 381 transactions would create preferential treatment, in certain fact patterns, of split foreign income taxes that are maintained by a section 902 corporation in suspension accounts rather than included in post-1986 foreign income tax pools, such as when the section 902 corporation has a deficit in post-1986 undistributed earnings and profits. In addition, if suspended foreign income taxes are carried over to a domestic section 902 shareholder, currency exchange rate fluctuations could cause a disparity between the dollar amount of income included by the domestic

section 902 shareholder in respect of the functional currency amount of earnings and profits used to make the suspended tax payment and the creditable dollar amount of the foreign income taxes that are unsuspended. This disparity is inconsistent with the inclusion that results from unsuspending split taxes at the level of the payor section 902 corporation, deeming such taxes to be paid by the section 902 shareholder, and including the dollar amount of taxes in the shareholder's income under the section 78 gross-up. Moreover, taxpayers could choose to avoid permanent suspension of split taxes in an inbound transaction by, for example, causing a distribution of the related income to the payor of the split taxes before the payor of the split taxes is liquidated or otherwise combined with a domestic person. For these reasons, the final regulations do not modify §1.909-6T(e)(3) to treat split taxes as a carryover attribute in inbound section 381 transactions.

Another comment addressed the fact pattern in which a covered person with the related income ceases to be a covered person with respect to the payor of split taxes and the payor does not take the related income into account before, or in connection with, the termination of the covered person relationship, resulting in the permanent suspension of split taxes. The comment recommended that, in this case, if the covered person is a direct or indirect subsidiary of the payor of the split taxes, the payor should be treated as having paid the split taxes on behalf of the covered person and as having made a capital contribution in the amount of the split taxes to the covered person directly or indirectly through a chain of subsidiaries, thereby stepping up basis in the covered person's stock. The comment also recommended reducing the earnings and profits of the covered person by the amount of the split taxes as though the covered

person had paid the split taxes. Stepping up the basis of the stock of the covered person by the amount of the permanently suspended split taxes and reducing its earnings and profits by the same amount would ensure that any inclusion attributable to the earnings and profits or appreciated assets of the departing or liquidating covered person is reduced by the amount of the split taxes, effectively converting the permanently suspended split taxes into a deduction for the payor of the split taxes.

Section 909 contemplates that split taxes may remain permanently suspended as a result of a disposition or liquidation of the covered person. Section 909 provides that split taxes are suspended until the related income is taken into account generally by the payor of the split tax or relevant section 902 shareholder, and does not provide for a deduction of split taxes in lieu of a credit. If the covered person does not distribute the full amount of related income prior to the liquidation or disposition of the covered person, and such liquidation or disposition does not result in the reflection of the related income in the earnings and profits of the payor of the split tax (or the relevant section 902 shareholder), then the related income is not taken into account as prescribed by section 909. The Treasury Department and the IRS, therefore, have concluded that it is appropriate for split taxes to remain suspended until and unless the related income is taken into account. Accordingly, the comment is not adopted.

VI. Taking related income into account as a result of a transaction under section 381

A comment incorrectly interpreted §1.909-6T(d)(8)(ii) as providing that when a payor section 902 corporation with suspended split taxes combines with the covered person with the related income in a transaction described in section 381, all related income is treated as taken into account even if the full amount of related income is not

reflected in the earnings and profits of the payor section 902 corporation (or surviving corporation) as a result of the transaction.

The Treasury Department and the IRS did not intend for a transaction described under section 381 to result in the unsuspension of split taxes if the transaction does not cause the payor of the split taxes to take into account earnings and profits of the covered person equal to the amount of related income specified in the relevant splitter arrangement definition. Accordingly, the final regulations clarify that split taxes are unsuspended only when the appropriate amount of related income is taken into account by the payor section 902 corporation either as a result of a distribution or inclusion out of the earnings and profits of the covered person or as a result of the combination of the payor section 902 corporation and the covered person in a transaction described in section 381.

VII. Additional splitter arrangement fact patterns

A comment recommended that the U.S. debt hybrid instrument splitter arrangement definition be expanded to include certain fact patterns in which the instrument owner is not related to the issuer of the instrument. The Treasury Department and the IRS have concluded that it is not appropriate at this time to extend the existing splitter arrangement list to include transactions between unrelated persons and do not adopt the comment. The Treasury Department and the IRS continue, however, to consider other arrangements that inappropriately separate foreign income taxes from the related income, and the circumstances under which a splitter arrangement described in regulations or other guidance under section 909 should be applied to arrangements between unrelated persons.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Pursuant to section 7805(f) of the Internal Revenue Code, the NPRM preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Drafting Information

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

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1--INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

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

Sections 1.909-1 through 1.906-6 also issued under 26 U.S.C. 909(e). * * *

Par. 2. Section 1.704-1 is amended as follows:

a. Paragraph (b)(0) is amended by adding entries for §1.704-1(b)(1)(ii)(b)(3) and §1.704-1(b)(4)(viii)(d)(3).

b. Paragraph (b)(1)(ii)(b)(3) is revised.

c. Paragraph (b)(4)(viii)(d)(3) is revised.

d. Paragraph (b)(5), Example 24, is revised.

The revisions read as follows:

§1.704-1. Partner's distributive share.

* * * * *

(b) Determination of partner's distributive share –(0) Cross-references.

Heading	Section
* * * * * * *	
Special rules for certain interbranch payments.	.1.704-1(b)(1)(ii)(b)(3)
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Special rules for certain interbranch payments	1.704-1(b)(4)(viii)(d)(3)
* * * * * * *	

(1) * * *

(ii) * * *

(b) * * *

(3) Special rules for certain inter-branch payments--(A) In general. The provisions of §1.704-1(b)(4)(viii)(d)(3) apply for partnership taxable years ending after February 9, 2015. See 26 CFR 1.704-1T(b)(4)(viii)(d)(3) (revised as of April 1, 2014) for rules applicable to taxable years beginning on or after January 1, 2012, and ending on or before February 9, 2015.

(B) Transition rule. Transition relief is provided herein to partnerships whose agreements were entered into prior to February 14, 2012. In such cases, if there has

been no material modification to the partnership agreement on or after February 14, 2012, then the partnership may apply the provisions of §1.704-1(b)(4)(viii)(c)(3)(ii) and §1.704-1(b)(4)(viii)(d)(3) (revised as of April 1, 2011). For purposes of this paragraph (b)(1)(ii)(b)(3), any change in ownership constitutes a material modification to the partnership agreement. This transition rule does not apply to any taxable year in which persons bearing a relationship to each other that is specified in section 267(b) or section 707(b) collectively have the power to amend the partnership agreement without the consent of any unrelated party (and all subsequent taxable years).

* * * * *

(4) * * *

(vii) * * *

(d) * * *

(3) Special rules for inter-branch payments. For rules relating to foreign tax paid or accrued in partnership taxable years beginning before January 1, 2012, in respect of certain inter-branch payments, see 26 CFR 1.704-1(b)(4)(viii)(d)(3) (revised as of April 1, 2011).

* * * * *

(b)

(5) * * *

Example 24. (i) The facts are the same as in Example 21, except that businesses M and N are conducted by entities (DE1 and DE2, respectively) that are corporations for country X and Y tax purposes and disregarded entities for U.S. Federal income tax purposes. Also, assume that DE1 makes payments of $75,000 during 2012 to DE2 that are deductible by DE1 for country X tax purposes and includible in income of DE2 for country Y tax purposes. As a result of such payments, DE1 has taxable income of $25,000 for country X purposes on which $10,000 of taxes are imposed and DE2 has taxable income of $125,000 for country Y purposes on which $25,000 of taxes

are imposed. For U.S. Federal income tax purposes, $100,000 of AB's income is attributable to the activities of DE1 and $50,000 of AB's income is attributable to the activities of DE2. Pursuant to the partnership agreement, all partnership items from business M, excluding CFTEs paid or accrued by business M, are allocated 75% to A and 25% to B, and all partnership items from business N, excluding CFTEs paid or accrued by business N, are split evenly between A and B (50% each). Accordingly, A is allocated 75% of the income from business M ($75,000), and 50% of the income from business N ($25,000). B is allocated 25% of the income from business M ($25,000), and 50% of the income from business N ($25,000).

(ii) Because the partnership agreement provides for different allocations of the net income attributable to businesses M and N, the net income attributable to each of business M and business N is income in separate CFTE categories. See paragraph (b)(4)(viii)(c)(2) of this section. Under paragraph (b)(4)(viii)(c)(3) of this section, the $100,000 of net income attributable to business M is in the business M CFTE category and the $50,000 of net income attributable to business N is in the business N CFTE category. Under paragraph (b)(4)(viii)(d)(1) of this section, the $10,000 of country X taxes is allocated to the business M CFTE category and $10,000 of the country Y taxes is allocated to the business N CFTE category. The additional $15,000 of country Y tax imposed with respect to the inter-branch payment is assigned to the business M CFTE category because for U.S. Federal income tax purposes, the related $75,000 of income that country Y is taxing is in the business M CFTE category. Therefore, $25,000 of taxes ($10,000 of country X taxes and $15,000 of the country Y taxes) is related to the $100,000 of net income in the business M CFTE category and the other $10,000 of country Y taxes is related to the $50,000 of net income in the business N CFTE category. See paragraph (b)(4)(viii)(c)(1) of this section. The allocations of country X taxes will be in proportion to the distributive shares of income to which they relate and will be deemed to be in accordance with the partners' interests in the partnership if such taxes are allocated 75% to A and 25% to B. The allocations of country Y taxes will be in proportion to the distributive shares of income to which they relate and will be deemed to be in accordance with the partners' interests in the partnership if $15,000 of such taxes is allocated 75% to A and 25% to B and the other $10,000 of such taxes is allocated 50% to A and 50% to B. No inference is intended with respect to the application of other provisions to arrangements that involve disregarded payments.

(iii) Assume that the facts are the same as in paragraph (i) of this Example 24, except that in order to reflect the $75,000 payment from DE1 to DE2, the partnership agreement allocates $75,000 of the income attributable to business M equally between A and B (50% each). In order to prevent separating the CFTEs from the related foreign income, the $75,000 payment is treated as a divisible part of the business M activity and, therefore, a separate activity. See paragraph (b)(4)(viii)(c)(2)(iii) of this section. Because items from the disregarded payment and business N are both shared equally between A and B, the disregarded payment activity and the business N activity are treated as a single CFTE category. See paragraph (b)(4)(viii)(c)(2)(i) of this section. Accordingly, $25,000 of net income attributable to business M is in the business M CFTE category and $75,000 of income of business M attributable to the disregarded

payment and the $50,000 of net income attributable to business N are in the business N CFTE category. Under paragraph (b)(4)(viii)(d)(1) of this section, the $10,000 of country X taxes is allocated to the business M CFTE category and all $25,000 of the country Y taxes is allocated to the business N CFTE category. The allocations of country X taxes will be in proportion to the distributive shares of income to which they relate and will be deemed to be in accordance with the partners' interests in the partnership if such taxes are allocated 75% to A and 25% to B. The allocations of country Y taxes will be in proportion to the distributive shares of income to which they relate and will be deemed to be in accordance with the partners' interests in the partnership if such taxes are allocated 50% to A and 50% to B.

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§1.704-1T [Removed]

Par. 3. Section 1.704-1T is removed.

Par. 4. Section 1.909-0 is added to read as follows:

§1.909-0 Outline of regulation provisions for section 909.

This section lists the headings for §§1.909-1 through 1.909-6.

§1.909-1 Definitions and special rules.

(a) Definitions.
(b) Taxes paid or accrued by a partnership, S corporation or trust.
(c) Related income of a partnership, S corporation or trust.
(d) Application of section 909 to pre-1987 accumulated profits and pre-1987 foreign income taxes.
(e) Effective/applicability date.

§1.909-2 Splitter arrangements.
(a) Foreign tax credit splitting event.
(1) In general.
(2) Split taxes not taken into account.
(b) Splitter arrangements.
(1) Reverse hybrid splitter arrangements.
(i) In general.
(ii) Split taxes from a reverse hybrid splitter arrangement.
(iii) Related income from a reverse hybrid splitter arrangement.
(iv) Reverse hybrid.
(v) Examples.
(2) Loss-sharing splitter arrangements.
(i) In general.

(ii) U.S. combined income group.
(iii) Income and shared loss of a U.S. combined income group.
(iv) Split taxes from a loss-sharing splitter arrangement.
(v) Related income from a loss-sharing splitter arrangement.
(vi) Foreign group relief or other loss-sharing regime.
(vii) Examples.
(3) Hybrid instrument splitter arrangements.
(i) U.S. equity hybrid instrument splitter arrangement.
(ii) U.S. debt hybrid instrument splitter arrangement.
(4) Partnership inter-branch payment splitter arrangements.
(i) In general.
(ii) Split taxes from a partnership inter-branch payment splitter arrangement.
(iii) Related income from a partnership inter-branch payment splitter arrangement.
(c) Effective/applicability date.

§1.909-3 Rules regarding related income and split taxes.

(a) Interim rules for identifying related income and split taxes.
(b) Split taxes on deductible disregarded payments.
(c) Effective/applicability date.

§1.909-4 Coordination rules.

(a) Interim rules.
(b) Effective/applicability date.

§1.909-5 2011 and 2012 splitter arrangements.

(a) Taxes paid or accrued in taxable years beginning in 2011.
(b) Taxes paid or accrued in certain taxable years beginning in 2012 with respect to a foreign consolidated group splitter arrangement.
(c) Effective/applicability date.

§1.909-6 Pre-2011 foreign tax credit splitting events.

(a) Foreign tax credit splitting event.
(1) In general.
(2) Taxes not subject to suspension under section 909.
(3) Taxes subject to suspension under section 909.
(b) Pre-2011 splitter arrangements.
(1) Reverse hybrid structure splitter arrangements.
(2) Foreign consolidated group splitter arrangements.
(3) Group relief or other loss-sharing regime splitter arrangements.
(i) In general.
(ii) Split taxes and related income.

(4) Hybrid instrument splitter arrangements.
(i) In general.
(ii) U.S. equity hybrid instrument splitter arrangement.
(iii) U.S. debt hybrid instrument splitter arrangement.
(c) General rules for applying section 909 to pre-2011 split taxes and related income.
(1) Annual determination.
(2) Separate categories.
(d) Special rules regarding related income.
(1) Annual adjustments.
(2) Effect of separate limitation losses and deficits.
(3) Pro rata method for distributions out of earnings and profits that include both related income and other income.
(4) Alternative method for distributions out of earnings and profits that include both related income and other income.
(5) Distributions, deemed distributions, and inclusions out of related income.
(6) Carryover of related income.
(7) Related income taken into account by a section 902 shareholder.
(8) Related income taken into account by a payor section 902 corporation.
(9) Related income taken into account by an affiliated group of corporations that includes a section 902 shareholder.
(10) Distributions of previously-taxed earnings and profits.
(e) Special rules regarding pre-2011 split taxes.
(1) Taxes deemed paid pro rata out of pre-2011 split taxes and other taxes.
(2) Pre-2011 split taxes deemed paid in pre-2011 taxable years.
(3) Carryover of pre-2011 split taxes.
(4) Determining when pre-2011 split taxes are no longer treated as pre-2011 split taxes.
(f) Rules relating to partnerships and trusts.
(1) Taxes paid or accrued by partnerships.
(2) Section 704(b) allocations.
(3) Trusts.
(g) Interaction between section 909 and other Code provisions.
(1) Section 904(c).
(2) Section 905(a).
(3) Section 905(c).
(4) Other foreign tax credit provisions.
(h) Effective/applicability date.

§1.909-0T [Removed]

Par. 5. Section 1.909-0T is removed.

Par. 6. Sections 1.909-1 is added to read as follows:

§1.909-1 Definitions and special rules.

(a) Definitions. For purposes of section 909, this section, and §§1.909-2 through 1.909-5, the following definitions apply:

(1) The term section 902 corporation means any foreign corporation with respect to which one or more domestic corporations meet the ownership requirements of section 902(a) or (b).

(2) The term section 902 shareholder means any domestic corporation that meets the ownership requirements of section 902(a) or (b) with respect to a section 902 corporation.

(3) The term payor means a person that pays or accrues a foreign income tax within the meaning of §1.901-2(f), and also includes a person that takes foreign income taxes paid or accrued by a partnership, S corporation, estate or trust into account pursuant to section 702(a)(6), section 901(b)(5) or section 1373(a).

(4) The term covered person means, with respect to a payor--

(i) Any entity in which the payor holds, directly or indirectly, at least a 10 percent ownership interest (determined by vote or value);

(ii) Any person that holds, directly or indirectly, at least a 10 percent ownership interest (determined by vote or value) in the payor; or

(iii) Any person that bears a relationship that is described in section 267(b) or 707(b) to the payor.

(5) The term foreign income tax means any income, war profits, or excess profits tax paid or accrued to any foreign country or to any possession of the United States. A foreign income tax includes any tax paid or accrued in lieu of such a tax within the meaning of section 903.

(6) The term post-1986 foreign income taxes has the meaning provided in §1.902-1(a)(8).

(7) The term post-1986 undistributed earnings has the meaning provided in §1.902-1(a)(9).

(8) The term disregarded entity means an entity that is disregarded as an entity separate from its owner, as provided in §301.7701-2(c)(2)(i) of this chapter.

(9) The term hybrid partnership means a partnership that is subject to income tax in a foreign country as a corporation (or otherwise at the entity level) on the basis of residence, place of incorporation, place of management or similar criteria.

(b) Taxes paid or accrued by a partnership, S corporation or trust. Under section 909(c)(1), section 909 applies at the partner level, and similar rules apply in the case of an S corporation or trust. Accordingly, in the case of foreign income taxes paid or accrued by a partnership, S corporation or trust, taxes allocated to one or more partners, shareholders or beneficiaries (as the case may be) will be treated as split taxes to the extent such taxes would be split taxes if the partner, shareholder or beneficiary had paid or accrued the taxes directly on the date such taxes are taken into account by the partner under sections 702 and 706(a), by the shareholder under section 1373(a), or by the beneficiary under section 901(b)(5). Any such split taxes will be suspended in the hands of the partner, shareholder or beneficiary.

(c) Related income of a partnership, S corporation or trust. For purposes of determining whether related income is taken into account by a covered person, related income of a partnership, S corporation or trust is considered to be taken into account by the partner, shareholder or beneficiary to whom the related income is allocated.

(d) Application of section 909 to pre-1987 accumulated profits and pre-1987 foreign income taxes. Section 909 and §§1.909-1 through 1.909-5 will apply to pre-1987 accumulated profits (as defined in §1.902-1(a)(10)(i)) and pre-1987 foreign income taxes (as defined in §1.902-1(a)(10)(iii)) of a section 902 corporation attributable to taxable years beginning on or after January 1, 2012.

(e) Effective/applicability date. This section applies to taxable years ending after February 9, 2015. See 26 CFR 1.909-1T (revised as of April 1, 2014) for rules applicable to taxable years beginning on or after January 1, 2011, and ending on or before February 9, 2015.

§1.909-1T [Removed]

Par. 7. Section 1.909-1T is removed.

Par. 8. Section 1.909-2 is added to read as follows:

§1.909-2 Splitter arrangements.

(a) Foreign tax credit splitting event--(1) In general. There is a foreign tax credit splitting event with respect to foreign income taxes paid or accrued if and only if, in connection with an arrangement described in paragraph (b) of this section (a splitter arrangement) the related income was, is or will be taken into account for U.S. Federal income tax purposes by a person that is a covered person with respect to the payor of the tax. Foreign income taxes that are paid or accrued in connection with a splitter arrangement are split taxes to the extent provided in paragraph (b) of this section. Income (or, as appropriate, earnings and profits) that was, is or will be taken into account by a covered person in connection with a splitter arrangement is related income to the extent provided in paragraph (b) of this section.

(2) Split taxes not taken into account. Split taxes will not be taken into account for U.S. Federal income tax purposes before the taxable year in which the related income is taken into account by the payor or, in the case of split taxes paid or accrued by a section 902 corporation, by a section 902 shareholder of such section 902 corporation. Therefore, in the case of split taxes paid or accrued by a section 902 corporation, split taxes will not be taken into account for purposes of sections 902 or 960, or for purposes of determining earnings and profits under section 964(a), before the taxable year in which the related income is taken into account by the payor section 902 corporation, a section 902 shareholder of the section 902 corporation, or a member of the section 902 shareholder's consolidated group. See §1.909-3(a) for rules relating to when split taxes and related income are taken into account.

(b) Splitter arrangements. The arrangements set forth in this paragraph (b) are splitter arrangements.

(1) Reverse hybrid splitter arrangements--(i) In general. A reverse hybrid is a splitter arrangement when a payor pays or accrues foreign income taxes with respect to income of a reverse hybrid. A reverse hybrid splitter arrangement exists even if the reverse hybrid has a loss or a deficit in earnings and profits for a particular year for U.S. Federal income tax purposes (for example, due to a timing difference).

(ii) Split taxes from a reverse hybrid splitter arrangement. The foreign income taxes paid or accrued with respect to income of the reverse hybrid are split taxes.

(iii) Related income from a reverse hybrid splitter arrangement. The related income with respect to split taxes from a reverse hybrid splitter arrangement is the earnings and profits (computed for U.S. Federal income tax purposes) of the reverse

hybrid attributable to the activities of the reverse hybrid that gave rise to income included in the payor's foreign tax base with respect to which the split taxes were paid or accrued. Accordingly, related income of the reverse hybrid includes items of income or expense attributable to a disregarded entity owned by the reverse hybrid only to the extent that the income attributable to the activities of the disregarded entity is included in the payor's foreign tax base.

(iv) Reverse hybrid. The term reverse hybrid means an entity that is a corporation for U.S. Federal income tax purposes but is a fiscally transparent entity (under the principles of §1.894-1(d)(3)) or a branch under the laws of a foreign country imposing tax on the income of the entity.

(v) Examples. The following examples illustrate the rules of paragraph (b)(1) of this section.

Example 1. (i) Facts. USP, a domestic corporation, wholly owns DE, a disregarded entity for U.S. federal income tax purposes that is organized in country A and treated as a corporation for country A tax purposes. DE wholly owns RH, a corporation for U.S. Federal income tax purposes that is organized in country A and treated as a fiscally transparent entity for country A tax purposes. Country A imposes an income tax at the rate of 30% on DE with respect to the items of income earned by RH. Prior to year 1, RH had no income for country A purposes and had no post-1986 earnings and profits for U.S. Federal income tax purposes. In year 1, RH earns 200u of income on which DE pays 60u of country A tax. Pursuant to §1.901-2(f)(4)(ii), USP is treated as legally liable for the 60u of country A taxes paid by DE. DE has no other income. In year 2, RH earns no income and incurs no losses or expenses. At the end of year 2, RH distributes 100u to DE.

(ii) Result. (A) Split taxes and related income. Pursuant to §1.909-2(b)(1)(iv), RH is a reverse hybrid because it is a corporation for U.S. Federal income tax purposes and a fiscally transparent entity for country A purposes. Pursuant to §1.909-2(b)(1), RH is a covered person with respect to USP because USP wholly owns RH for U.S. Federal income tax purposes. Pursuant to §1.909-2(b)(1)(i), there is a splitter arrangement with respect to RH because USP paid country A tax with respect to the income of RH. All 60u of taxes paid by USP in year 1 with respect to the income of RH are split taxes pursuant to §1.909-2(b)(1)(ii). The post-1986 earnings and profits of RH are 200u as of the end of year 1. Pursuant to §1.909-2(b)(1)(iii), the related income in year 1 is the

200u of RH's earnings and profits that are attributable to the activities that gave rise to the split taxes. No additional split taxes or related income arise in year 2.

(B) Distribution. Because DE is a disregarded entity, the 100u distribution by RH at the end of year 2 is treated as a dividend to USP. Pursuant to §1.909-6(d)(7) and §1.909-3(a), 100u of the 200u of related income of RH, or 50%, is taken into account by USP by reason of the 100u dividend. Accordingly, pursuant to §1.909-6(e)(4) and §1.909-3(a), a ratable portion of the split taxes, or 30u of taxes (50% of 60u), is no longer treated as split taxes and is taken into account by USP for U.S. Federal income tax purposes.

Example 2. (i) Facts. The facts are the same as in Example 1, except that in year 2, RH has a 100u loss for U.S. Federal income tax purposes as well as for country A tax purposes. For country A tax purposes, DE takes the 100u loss into account in year 2 and may not carry back the 100u loss to offset its country A taxable income for year 1. At the end of year 2, RH distributes 100u to DE.

(ii) Result. (A) Split taxes and related income. The split taxes and related income for year 1 are the same as in Example 1. Pursuant to §1.909-2(b)(1)(iii), §1.909-6(d)(1) and §1.909-3(a), the total related income of RH is reduced to 100u (200u – 100u) in year 2 because RH incurred a 100u loss in year 2 attributable to the activities that are included in DE's country A tax base.

(B) Distribution. Because DE is a disregarded entity, the 100u distribution by RH at the end of year 2 is treated as a dividend to USP. Pursuant to §1.909-6(d)(7) and §1.909-3(a), 100u of the 100u of related income of RH, or 100%, is taken into account by USP by reason of the 100u dividend. Accordingly, pursuant to §1.909-6(e)(4) and §1.909-3(a), a ratable portion of the split taxes, or 60u of taxes (100% of 60u), is no longer treated as split taxes and is taken into account by USP for U.S. Federal income tax purposes.

(2) Loss-sharing splitter arrangements--(i) In general. A foreign group relief or other loss-sharing regime is a loss-sharing splitter arrangement to the extent that a shared loss of a U.S. combined income group could have been used to offset income of that group in the current or in a prior foreign taxable year (usable shared loss) but is used instead to offset income of another U.S. combined income group.

(ii) U.S. combined income group. The term U.S. combined income group means an individual or a corporation and all entities (including entities that are fiscally transparent for U.S. Federal income tax purposes under the principles of §1.894-

1(d)(3)) that for U.S. Federal income tax purposes combine any of their respective items of income, deduction, gain or loss with the income, deduction, gain or loss of such individual or corporation. A U.S. combined income group can arise, for example, as a result of an entity being disregarded or, in the case of a partnership or hybrid partnership and a partner, as a result of the allocation of income or any other item of the partnership to the partner. For purposes of this paragraph (b)(2)(ii), a branch is treated as an entity, all members of a U.S. affiliated group of corporations (as defined in section 1504) that file a consolidated return are treated as a single corporation, and two or more individuals that file a joint return are treated as a single individual. A U.S. combined income group may consist of a single individual or corporation and no other entities, but cannot include more than one individual or corporation. In addition, an entity may belong to more than one U.S. combined income group. For example, a hybrid partnership with two corporate partners that do not combine any of their items of income, deduction, gain or loss for U.S. Federal income tax purposes is in a separate U.S. combined income group with each of its partners.

(iii) Income and shared loss of a U.S. combined income group--(A) Income. Except as otherwise provided in this paragraph (b)(2)(iii)(A), the income of a U.S. combined income group is the aggregate amount of taxable income recognized or taken into account for foreign tax purposes by those members that have positive taxable income for foreign tax purposes. In the case of an entity that is fiscally transparent (under the principles of §1.894-1(d)(3)) for foreign tax purposes and that is a member of more than one U.S. combined income group, the foreign taxable income of the entity is allocated between or among the groups under foreign tax law. In the case of an entity

that is not fiscally transparent for foreign tax purposes and that is a member of more than one U.S. combined income group, the foreign taxable income of the entity is allocated between or among those groups based on U.S. Federal income tax principles. For example, in the case of a hybrid partnership, the foreign taxable income of the partnership is allocated between or among the groups in the manner the partnership allocates the income under section 704(b). To the extent the foreign taxable income would be income under U.S. Federal income tax principles in another year, the income is allocated between or among the groups based on how the hybrid partnership would allocate the income if the income were recognized for U.S. Federal income tax purposes in the year in which the income is recognized for foreign tax purposes. To the extent the foreign taxable income would not constitute income under U.S. Federal income tax principles in any year, the income is allocated between or among the groups in the same manner as the partnership items attributable to the activity giving rise to the foreign taxable income.

(B) Shared loss. The term shared loss means a loss of one entity for foreign tax purposes that, in connection with a foreign group relief or other loss-sharing regime, is taken into account by one or more other entities. Except as otherwise provided in this paragraph (b)(2)(iii)(B), the amount of shared loss of a U.S. combined income group is the sum of the shared losses of all members of the U.S. combined income group. In the case of an entity that is fiscally transparent (under the principles of §1.894-1(d)(3)) for foreign tax purposes and that is a member of more than one U.S. combined income group, the shared loss of the entity is allocated between or among the groups under foreign tax law. In the case of an entity that is not fiscally transparent for foreign tax

purposes and that is a member of more than one U.S. combined income group, the shared loss of the entity will be allocated between or among those groups based on U.S. Federal income tax principles. For example, in the case of a hybrid partnership, the shared loss of the partnership will be allocated between or among the groups in the manner the partnership allocates the loss under section 704(b). To the extent the shared loss would be a loss under U.S. Federal income tax principles in another year, the loss is allocated between or among the groups based on how the partnership would allocate the loss if the loss were recognized for U.S. Federal income tax purposes in the year in which the loss is recognized for foreign tax purposes. To the extent the shared loss would not constitute a loss under U.S. Federal income tax principles in any year, the loss is allocated between or among the groups in the same manner as the partnership items attributable to the activity giving rise to the shared loss.

(iv) Split taxes from a loss-sharing splitter arrangement. Split taxes from a loss-sharing splitter arrangement are foreign income taxes paid or accrued by a member of the U.S. combined income group with respect to income from the current foreign taxable year, or, in the case of a foregone carryback loss, from the prior foreign taxable year, equal to the amount of the usable shared loss of that group that offsets income of another U.S. combined income group.

(v) Related income from a loss-sharing splitter arrangement. The related income with respect to split taxes from a loss-sharing splitter arrangement is an amount of income of the individual or corporate member of the U.S. combined income group equal to the amount of income under foreign tax law of that U.S. combined income group that is offset by the usable shared loss of another U.S. combined income group.

(vi) Foreign group relief or other loss-sharing regime. A foreign group relief or other loss-sharing regime exists when an entity may surrender its loss to offset the income of one or more other entities. A foreign group relief or other loss-sharing regime does not include an allocation of loss of an entity that is a partnership or other fiscally transparent entity (under the principles of §1.894-1(d)(3)) for foreign tax purposes or regimes in which foreign tax is imposed on combined income (such as a foreign consolidated regime), as described in §1.901-2(f)(3).

(vii) Examples. The following examples illustrate the rules of paragraph (b)(2) of this section.

Example 1. (i) Facts. USP, a domestic corporation, wholly owns CFC1, a corporation organized in country A. CFC1 wholly owns CFC2 and CFC3, both corporations organized in country A. CFC2 wholly owns DE, an entity organized in country A. DE is a corporation for country A tax purposes and a disregarded entity for U.S. Federal income tax purposes. Country A has a loss-sharing regime under which a loss of CFC1, CFC2, CFC3 or DE may be used to offset the income of one or more of the others. Country A imposes an income tax at the rate of 30% on the taxable income of corporations organized in country A. In year 1, before any loss sharing, CFC1 has no income, CFC2 has income of 50u, CFC3 has income of 200u, and DE has a loss of 100u. Under the provisions of country A's loss-sharing regime, the group decides to use DE's 100u loss to offset 100u of CFC3's income. After the loss is shared, for country A's tax purposes, CFC2 still has 50u of income on which it pays 15u of country A tax. CFC3 has income of 100u (200u less the 100u shared loss) on which it pays 30u of country A tax. For U.S. Federal income tax purposes, the loss sharing with CFC3 is not taken into account. Because DE is a disregarded entity, its 100u loss is taken into account by CFC2 and reduces its earnings and profits for U.S. Federal income tax purposes. Accordingly, before application of section 909, CFC2 has a loss for earnings and profits purposes of 65u (50u income less 15u taxes paid to country A less 100u loss of DE). CFC2 also has the U.S. dollar equivalent of 15u of foreign income taxes to add to its post-1986 foreign income taxes pool. CFC3 has earnings and profits of 170u (200u income less 30u of taxes) and the dollar equivalent of 30u of foreign income taxes to add to its post-1986 foreign income taxes pool.

(ii) Result. Pursuant to §1.909-2(b)(2)(ii), CFC2 and DE constitute one U.S. combined income group, while CFC1 and CFC3 each constitute separate U.S. combined income groups. Pursuant to §1.909-2(b)(2)(iii)(A), the income of the CFC2 U.S. combined income group is 50u (CFC2's country A taxable income of 50u). The income of the CFC3 U.S. combined income group is 200u (CFC3's country A taxable

income of 200u). Pursuant to §1.909-2(b)(2)(iii)(B), the shared loss of the CFC2 U.S. combined income group includes the 100u of shared loss incurred by DE. The usable shared loss of the CFC2 U.S. combined income group is 50u, the amount of the group's shared loss that could have otherwise offset CFC2's 50u of country A taxable income that is included in the income of the CFC2 U.S. combined income group. There is a splitter arrangement because the 50u usable shared loss of the CFC2 U.S. combined income group was used instead to offset income of CFC3, which is included in the CFC3 U.S. combined income group. Pursuant to §1.909-2(b)(2)(iv), the split taxes are the 15u of country A income taxes paid by CFC2 on 50u of income, an amount of income of the CFC2 U.S. combined income group equal to the amount of usable shared loss of that group that was used to offset income of the CFC3 U.S. combined income group. Pursuant to §1.909-2(b)(2)(v), the related income is the 50u of CFC3's income that equals the amount of income of the CFC3 U.S. combined income group that was offset by the usable shared loss of the CFC2 U.S. combined income group.

Example 2. (i) Facts. USP, a domestic corporation, wholly owns CFC1, a corporation organized in country B. CFC1 wholly owns CFC2 and CFC3, both corporations organized in country B. CFC2 wholly owns DE, an entity organized in country B. DE is a corporation for country B tax purposes and a disregarded entity for U.S. Federal income tax purposes. CFC2 and CFC3 each own 50% of HP1, an entity organized in country B. HP1 is a corporation for country B tax purposes and a partnership for U.S. Federal income tax purposes. All items of income and loss of HP1 are allocated for U.S. Federal income tax purposes equally between CFC2 and CFC3, and all entities use the country B currency "u" as their functional currency. Country B has a loss-sharing regime under which a loss of any of CFC1, CFC2, CFC3, DE, and HP1 may be used to offset the income of one or more of the others. Country B imposes an income tax at the rate of 30% on the taxable income of corporations organized in country B. In year 1, before any loss sharing, CFC2 has income of 100u, CFC1 and CFC3 have no income, DE has a loss of 100u, and HP1 has income of 200u. Under the provisions of country B's loss-sharing regime, the group decides to use DE's 100u loss to offset 100u of HP1's income. After the loss is shared, for country B tax purposes, CFC2 has 100u of income on which it pays 30u of country B income tax, and HP1 has 100u of income (200u less the 100u shared loss) on which it pays 30u of country B income tax. For U.S. Federal income tax purposes, the loss sharing with HP1 is not taken into account, and, because DE is a disregarded entity, its 100u loss is taken into account by CFC2 and reduces CFC2's earnings and profits for U.S. Federal income tax purposes. The 200u income of HP1 is allocated 50/50 to CFC2 and CFC3, as is the 30u of country B income tax paid by HP1. Accordingly, before application of section 909, for U.S. Federal income tax purposes, CFC2 has earnings and profits of 55u (100u income plus 100u share of HP1's income less 100u loss of DE less 30u country B income tax paid by CFC2 less 15u share of HP1's country B income tax) and the dollar equivalent of 45u of country B income tax to add to its post-1986 foreign income taxes pool. CFC3 has earnings and profits of 85u (100u share of HP1's income less 15u share of HP1's country B income taxes) and the dollar equivalent of 15u of country B income tax to add to its post-1986 foreign income taxes pool.

(ii) U.S. combined income groups. Pursuant to §1.909-2(b)(2)(ii), because the income and loss of HP1 are combined in part with the income and loss of both CFC2 and CFC3, it belongs to both of the separate CFC2 and CFC3 U.S. combined income groups. DE is a member of the CFC2 U.S. combined income group.

(iii) Income of the U.S. combined income groups. Pursuant to §1.909-2(b)(2)(iii)(A), the income of the CFC2 U.S. combined income group is the 200u country B taxable income of the members of the group with positive taxable incomes (CFC2's country B taxable income of 100u plus 50% of HP1's country B taxable income of 200u, or 100u). Because DE does not have positive taxable income for country B tax purposes, its 100u loss is not included in the income of the CFC2 U.S. combined income group. The income of the CFC3 U.S. combined income group is 100u (50% of HP1's country B taxable income of 200u, or 100u).

(iv) Shared loss of the U.S. combined income groups. Pursuant to §1.909-2(b)(2)(iii)(B), the shared loss of the CFC2 U.S. combined income group is the 100u loss incurred by DE that is used to offset 100u of HP1's income. The CFC3 U.S. combined income group has no shared loss. Pursuant to §1.909-2(b)(2)(i), the usable shared loss of the CFC2 U.S. combined income group is 100u, the full amount of the group's 100u shared loss that could have been used to offset income of the CFC2 U.S. combined income group had the loss been used to offset 100u of CFC2's country B taxable income.

(v) Income offset by shared loss. The shared loss of the CFC2 combined income group is used to offset 100u country B taxable income of HP1. Because the taxable income of HP1 is allocated 50/50 between the CFC2 and CFC3 U.S. combined income groups, the shared loss is treated as offsetting 50u of the CFC2 U.S. combined income group's income and 50u of the CFC3 U.S. combined income group's income.

(vi) Splitter arrangement. There is a splitter arrangement because 50u of the 100u usable shared loss of the CFC2 U.S. combined income group was used to offset income of the CFC3 U.S. combined income group. Pursuant to §1.909-2(b)(2)(iv), the split taxes are the 15u of country B income tax paid by CFC2 on 50u of its income, which is equal to the amount of the CFC2 U.S. combined income group's usable shared loss that was used to offset income of another U.S. combined income group. Pursuant to §1.909-2(b)(2)(v), the related income is the 50u of CFC3's income that was offset by the usable shared loss of the CFC2 U.S. combined income group.

(3) Hybrid instrument splitter arrangements--(i) U.S. equity hybrid instrument splitter arrangement--(A) In general. A U.S. equity hybrid instrument is a splitter arrangement if:

(1) Under the laws of a foreign jurisdiction in which the instrument owner is subject to tax, the instrument gives rise to income includible in the instrument owner's income and such inclusion results in foreign income taxes paid or accrued by the instrument owner;

(2) Under the laws of a foreign jurisdiction in which the issuer is subject to tax, the instrument gives rise to deductions that are incurred or otherwise taken into account by the issuer; and

(3) The events that give rise to income includible in the instrument owner's income for foreign tax purposes as described in paragraph (b)(3)(i)(A)(1) of this section, and to deductions for the issuer for foreign tax purposes as described in paragraph (b)(3)(i)(A)(2) of this section, do not result in an inclusion of income for the instrument owner for U.S. federal income tax purposes.

(B) Split taxes from a U.S. equity hybrid instrument splitter arrangement. Split taxes from a U.S. equity hybrid instrument splitter arrangement equal the total amount of foreign income taxes paid or accrued by the owner of the hybrid instrument less the amount of foreign income taxes that would have been paid or accrued had the owner of the U.S. equity hybrid instrument not been subject to foreign tax on income from the instrument with respect to the events described in §1.909-2(b)(3)(i)(A).

(C) Related income from a U.S. equity hybrid instrument splitter arrangement. The related income with respect to split taxes from a U.S. equity hybrid instrument splitter arrangement is income of the issuer of the U.S. equity hybrid instrument in an amount equal to the amounts giving rise to the split taxes that are deductible by the

issuer for foreign tax purposes, determined without regard to the actual amount of the issuer's income or earnings and profits for U.S. Federal income tax purposes.

(D) U.S. equity hybrid instrument. The term U.S. equity hybrid instrument means an instrument that is treated as equity for U.S. Federal income tax purposes but for foreign income tax purposes either is treated as indebtedness or otherwise entitles the issuer to a deduction with respect to such instrument.

(E) Example. (i) Facts. USP, a domestic corporation, wholly owns CFC1, which wholly owns CFC2. Both CFC1 and CFC2 are corporations organized in country A. CFC2 issues an instrument to CFC1 that is treated as indebtedness for country A tax purposes but equity for U.S. Federal income tax purposes. Under country A's income tax laws, the instrument accrues interest at the end of each month, which results in a deduction for CFC2 and an income inclusion and tax liability for CFC1 in country A. The accrual of interest does not result in an inclusion of income for CFC1 for U.S. Federal income tax purposes. Pursuant to the terms of the instrument, CFC2 makes a distribution at the end of the year equal to the amounts of interest that have accrued during the year, and such payment is treated as a dividend that is included in the income of CFC1 for U.S. Federal income tax purposes.

(ii) Result. Pursuant to §1.909-2(b)(3)(i)(D), because the instrument is treated as equity for U.S. Federal income tax purposes but is treated as indebtedness for country A tax purposes, it is a U.S. equity hybrid instrument. Pursuant to §1.909-2(b)(3)(i)(A)(3), because the accrual of interest under foreign law does not result in an inclusion of income of CFC1 for U.S. Federal income tax purposes, there is a splitter arrangement. The fact that the payment of the accrued amount at the end of the year pursuant to the terms of the instrument gives rise to a dividend that is included in income of CFC1 for U.S. Federal income tax purposes does not change the result because it is the accrual of interest and not the payment that gives rise to income or deductions under foreign law. The payments will be treated as a distribution of related income to the extent provided by §1.909-3 and §1.909-6(d).

(ii) U.S. debt hybrid instrument splitter arrangement--(A) In general. A U.S. debt hybrid instrument is a splitter arrangement if foreign income taxes are paid or accrued by the issuer of a U.S. debt hybrid instrument with respect to income in an amount equal to the interest (including original issue discount) paid or accrued on the instrument

that is deductible for U.S. Federal income tax purposes but that does not give rise to a deduction under the laws of a foreign jurisdiction in which the issuer is subject to tax.

(B) Split taxes from a U.S. debt hybrid instrument splitter arrangement. Split taxes from a U.S. debt hybrid instrument splitter arrangement are the foreign income taxes paid or accrued by the issuer on the income that would have been offset by the interest paid or accrued on the U.S. debt hybrid instrument had such interest been deductible for foreign tax purposes.

(C) Related income from a U.S. debt hybrid instrument splitter arrangement. The related income from a U.S. debt hybrid instrument splitter arrangement is the gross amount of the interest income recognized for U.S. Federal income tax purposes by the owner of the U.S. debt hybrid instrument, determined without regard to the actual amount of the owner's income or earnings and profits for U.S. Federal income tax purposes.

(D) U.S. debt hybrid instrument. The term U.S. debt hybrid instrument means an instrument that is treated as equity for foreign tax purposes but as indebtedness for U.S. Federal income tax purposes.

(4) Partnership inter-branch payment splitter arrangements--(i) In general. An allocation of foreign income tax paid or accrued by a partnership with respect to an inter-branch payment as described in §1.704-1(b)(4)(viii)(d)(3) (revised as of April 1, 2011) (the inter-branch payment tax) is a splitter arrangement to the extent the inter-branch payment tax is not allocated to the partners in the same proportion as the distributive shares of income in the CFTE category to which the inter-branch payment

tax is or would be assigned under §1.704-1(b)(4)(viii)(d) without regard to §1.704-1(b)(4)(viii)(d)(3).

(ii) Split taxes from a partnership inter-branch payment splitter arrangement. The split taxes from a partnership inter-branch splitter arrangement equal the excess of the amount of the inter-branch payment tax allocated to a partner under the partnership agreement over the amount of the inter-branch payment tax that would have been allocated to the partner if the inter-branch payment tax had been allocated to the partners in the same proportion as the distributive shares of income in the CFTE category referred to in paragraph (b)(4)(i) of this section.

(iii) Related income from a partnership inter-branch payment splitter arrangement. The related income from a partnership inter-branch payment splitter arrangement equals the amount of income allocated to a partner that exceeds the amount of income that would have been allocated to the partner if income in the CFTE category referred to in paragraph (b)(4)(i) of this section in the amount of the inter-branch payment had been allocated to the partners in the same proportion as the inter-branch payment tax was allocated under the partnership agreement.

(c) Effective/applicability date. This section applies to foreign income taxes paid or accrued in taxable years ending after February 9, 2015. However, a taxpayer may choose to apply the provisions of §1.909-2T (as contained in 26 CFR part 1, revised as of April 1, 2014) in lieu of this section to foreign income taxes paid or accrued in its first taxable year ending after February 9, 2015, and in taxable years of foreign corporations with respect to which the taxpayer is a domestic shareholder (as defined in §1.902-1(a)) that end with or within that first taxable year. See 26 CFR 1.909-2T (revised as of April

1, 2014) for rules applicable to foreign income taxes paid or accrued in taxable years beginning on or after January 1, 2012, and ending on or before February 9, 2015.

§1.909-2T [Removed]

Par. 9. Section 1.909-2T is removed.

Par.10. Section 1.909-3 is added to read as follows:

§1.909-3 Rules regarding related income and split taxes.

(a) Interim rules for identifying related income and split taxes. The principles of paragraphs (d) through (f) of §1.909-6 apply to related income and split taxes in taxable years beginning on or after January 1, 2011, except that the alternative method for identifying distributions of related income described in §1.909-6(d)(4) applies only to identify the amount of pre-2011 split taxes of a section 902 corporation that are suspended as of the first day of the section 902 corporation's first taxable year beginning on or after January 1, 2011.

(b) Split taxes on deductible disregarded payments. Split taxes include taxes paid or accrued in taxable years beginning on or after January 1, 2011, with respect to the amount of a disregarded payment that is deductible by the payor of the disregarded payment under the laws of a foreign jurisdiction in which the payor of the disregarded payment is subject to tax on related income from a splitter arrangement. The amount of the deductible disregarded payment to which this paragraph (b) applies is limited to the amount of related income from such splitter arrangement.

(c) Effective/applicability date. This section applies to taxable years ending after February 9, 2015. See 26 CFR 1.909-3T (revised as of April 1, 2014) for rules

applicable to taxable years beginning on or after January 1, 2011, and ending on or before February 9, 2015.

§1.909-3T [Removed]

Par. 11. Section 1.909-3T is removed.

Par. 12. Section 1.909-4 is added to read as follows:

§1.909-4 Coordination rules.

(a) Interim rules. The principles of paragraph (g) of §1.909-6 apply to taxable years beginning on or after January 1, 2011.

(b) Effective/applicability date. This section applies to taxable years ending after February 9, 2015. See 26 CFR 1.909-4T (revised as of April 1, 2014) for rules applicable to taxable years beginning on or after January 1, 2011, and ending on or before February 9, 2015.

§1.909-4T [Removed]

Par. 13. Section 1.909-4T is removed.

Par. 14. Section 1.909-5 is added to read as follows:

§1.909-5 2011 and 2012 splitter arrangements.

(a) Taxes paid or accrued in taxable years beginning in 2011. (1) Foreign income taxes paid or accrued by any person in a taxable year beginning on or after January 1, 2011, and before January 1, 2012, in connection with a pre-2011 splitter arrangement (as defined in §1.909-6(b)), are split taxes to the same extent that such taxes would have been treated as pre-2011 split taxes if such taxes were paid or accrued by a section 902 corporation in a taxable year beginning on or before December 31, 2010. The related income with respect to split taxes from such an

arrangement is the related income described in §1.909-6(b), determined as if the payor were a section 902 corporation.

(2) Foreign income taxes paid or accrued by any person in a taxable year beginning on or after January 1, 2011, and before January 1, 2012, in connection with a partnership inter-branch payment splitter arrangement described in §1.909-2(b)(4) are split taxes to the extent that such taxes are identified as split taxes in §1.909-2(b)(4)(ii). The related income with respect to the split taxes is the related income described in §1.909-2(b)(4)(iii).

(b) Taxes paid or accrued in certain taxable years beginning in 2012 with respect to a foreign consolidated group splitter arrangement. Foreign income taxes paid or accrued by any person in a taxable year beginning on or after January 1, 2012, and on or before February 14, 2012, in connection with a foreign consolidated group splitter arrangement described in §1.909-6(b)(2) are split taxes to the same extent that such taxes would have been treated as pre-2011 split taxes if such taxes were paid or accrued by a section 902 corporation in a taxable year beginning on or before December 31, 2010. The related income with respect to split taxes from such an arrangement is the related income described in §1.909-6(b)(2), determined as if the payor were a section 902 corporation.

(c) Effective/applicability date. The rules of this section apply to foreign income taxes paid or accrued in taxable years beginning on or after January 1, 2011, and on or before February 14, 2012.

§1.909-5T [Removed]

Par. 15. Section 1.909-5T is removed.

Par. 16. Sections 1.909-6 is added to read as follows:

§1.909-6 Pre-2011 foreign tax credit splitting events.

(a) Foreign tax credit splitting event--(1) In general. This section provides rules for determining whether foreign income taxes paid or accrued by a section 902 corporation (as defined in section 909(d)(5)) in taxable years beginning on or before December 31, 2010 (pre-2011 taxable years and pre-2011 taxes) are suspended under section 909 in taxable years beginning after December 31, 2010, (post-2010 taxable years) of a section 902 corporation. Paragraph (b) of this section identifies an exclusive list of arrangements that will be treated as giving rise to foreign tax credit splitting events in pre-2011 taxable years (pre- 2011 splitter arrangements). Paragraphs (c), (d), and (e) of this section provide rules for determining the related income and pre-2011 split taxes paid or accrued with respect to pre-2011 splitter arrangements. Paragraph (f) of this section provides rules concerning the application of section 909 to partnerships and trusts. Paragraph (g) of this section provides rules concerning the interaction between section 909 and other Internal Revenue Code (Code) provisions.

(2) Taxes not subject to suspension under section 909. Pre-2011 taxes that will not be suspended under section 909 or paragraph (a) of this section are:

(i) Any pre-2011 taxes that were not paid or accrued in connection with a pre-2011 splitter arrangement identified in paragraph (b) of this section;

(ii) Any pre-2011 taxes that were paid or accrued in connection with a pre-2011 splitter arrangement identified in paragraph (b) of this section (pre-2011 split taxes) but that were deemed paid under section 902(a) or 960 on or before the last day of the section 902 corporation's last pre-2011 taxable year;

(iii) Any pre-2011 split taxes if either the payor section 902 corporation took the related income into account in a pre-2011 taxable year or a section 902 shareholder (as defined in §1.909-1(a)(2)) of the relevant section 902 corporation took the related income into account on or before the last day of the section 902 corporation's last pre-2011 taxable year; and

(iv) Any pre-2011 split taxes paid or accrued by a section 902 corporation in taxable years of such section 902 corporation beginning before January 1, 1997.

(3) Taxes subject to suspension under section 909. To the extent that the section 902 corporation paid or accrued pre-2011 split taxes that are not described in paragraph (a)(2) of this section, section 909 and the regulations under that section will apply to such pre-2011 split taxes for purposes of applying sections 902 and 960 in post-2010 taxable years of the section 902 corporation. Accordingly, these taxes will be removed from the section 902 corporation's pools of post-1986 foreign income taxes and suspended under section 909 as of the first day of the section 902 corporation's first post-2010 taxable year. There is no increase to a section 902 corporation's earnings and profits for the amount of any pre-2011 taxes to which section 909 applies that were previously deducted in computing earnings and profits in a pre-2011 taxable year.

(b) Pre-2011 splitter arrangements. The arrangements set forth in this paragraph (b) are pre-2011 splitter arrangements.

(1) Reverse hybrid structure splitter arrangements. A reverse hybrid structure exists when a section 902 corporation owns an interest in a reverse hybrid. A reverse hybrid is an entity that is a corporation for U.S. Federal income tax purposes but is a

pass-through entity or a branch under the laws of a foreign country imposing tax on the income of the entity. As a result, the owner of the reverse hybrid is subject to tax on the income of the entity under foreign law. A pre-2011 splitter arrangement involving a reverse hybrid structure exists when pre-2011 taxes are paid or accrued by a section 902 corporation with respect to income of a reverse hybrid that is a covered person with respect to the section 902 corporation. A pre-2011 splitter arrangement involving a reverse hybrid structure may exist even if the reverse hybrid has a deficit in earnings and profits for a particular year (for example, due to a timing difference). Such taxes paid or accrued by the section 902 corporation are pre-2011 split taxes. The related income is the earnings and profits (computed for U.S. Federal income tax purposes) of the reverse hybrid attributable to the activities of the reverse hybrid that gave rise to income included in the foreign tax base with respect to which the pre-2011 split taxes were paid or accrued. Accordingly, related income of the reverse hybrid would not include any item of income or expense attributable to a disregarded entity (as defined in §301.7701-2(c)(2)(i) of this chapter) owned by the reverse hybrid if income attributable to the activities of the disregarded entity is not included in the foreign tax base.

(2) Foreign consolidated group splitter arrangements. A foreign consolidated group exists when a foreign country imposes tax on the combined income of two or more entities. Tax is considered imposed on the combined income of two or more entities even if the combined income is computed under foreign law by attributing to one such entity the income of one or more entities. A foreign consolidated group is a pre-2011 splitter arrangement to the extent that the taxpayer did not allocate the foreign consolidated tax liability among the members of the foreign consolidated group based

on each member's share of the consolidated taxable income included in the foreign tax base under the principles of §1.901-2(f)(3) (revised as of April 1, 2011). A pre-2011 splitter arrangement involving a foreign consolidated group may exist even if one or more members has a deficit in earnings and profits for a particular year (for example, due to a timing difference). Pre-2011 taxes paid or accrued with respect to the income of a foreign consolidated group are pre-2011 split taxes to the extent that taxes paid or accrued by one member of the foreign consolidated group are imposed on a covered person's share of the consolidated taxable income included in the foreign tax base. The related income is the earnings and profits (computed for U.S. Federal income tax purposes) of such other member attributable to the activities of that other member that gave rise to income included in the foreign tax base with respect to which the pre-2011 split taxes were paid or accrued. No inference should be drawn from the treatment of foreign consolidated groups under section 909 as to the determination of the person who paid the foreign income tax for U.S. Federal income tax purposes.

(3) Group relief or other loss-sharing regime splitter arrangements--(i) In general. A foreign group relief or other loss-sharing regime exists when one entity with a loss permits the loss to be used to offset the income of one or more entities (shared loss). A pre-2011 splitter arrangement involving a shared loss exists when the following three conditions are met:

(A) There is an instrument that is treated as indebtedness under the laws of the jurisdiction in which the issuer is subject to tax and that is disregarded for U.S. Federal income tax purposes (disregarded debt instrument). Examples of a disregarded debt instrument include a debt obligation between two disregarded entities that are owned by

the same section 902 corporation, two disregarded entities that are owned by a partnership with one or more partners that are section 902 corporations, a section 902 corporation and a disregarded entity that is owned by that section 902 corporation, or a partnership in which the section 902 corporation is a partner and a disregarded entity that is owned by such partnership.

(B) The owner of the disregarded debt instrument pays a foreign income tax attributable to a payment or accrual on the instrument.

(C) The payment or accrual on the disregarded debt instrument gives rise to a deduction for foreign tax purposes and the issuer of the instrument incurs a shared loss that is taken into account under foreign law by one or more entities that are covered persons with respect to the owner of the instrument.

(ii) Split taxes and related income. In situations described in paragraph (b)(3)(i) of this section, pre-2011 taxes paid or accrued by the owner of the disregarded debt instrument with respect to amounts paid or accrued on the instrument (up to the amount of the shared loss) are pre-2011 split taxes. The related income of a covered person is an amount equal to the shared loss, determined without regard to the actual amount of the covered person's earnings and profits.

(4) Hybrid instrument splitter arrangements--(i) In general. A hybrid instrument for purposes of this paragraph (b)(4) is an instrument that either is treated as equity for U.S. Federal income tax purposes but is treated as indebtedness for foreign tax purposes (U.S. equity hybrid instrument), or is treated as indebtedness for U.S. Federal income tax purposes but is treated as equity for foreign tax purposes (U.S. debt hybrid instrument).

(ii) U.S. equity hybrid instrument splitter arrangement. If the issuer of a U.S. equity hybrid instrument is a covered person with respect to a section 902 corporation that is the owner of the U.S. equity hybrid instrument, there is a pre-2011 splitter arrangement with respect to the portion of the pre-2011 taxes paid or accrued by the owner section 902 corporation with respect to the amounts on the instrument that are deductible by the issuer as interest under the laws of a foreign jurisdiction in which the issuer is subject to tax but that do not give rise to income for U.S. Federal income tax purposes. Pre-2011 split taxes paid or accrued by the section 902 corporation equal the total amount of pre-2011 taxes paid or accrued by the section 902 corporation less the amount of pre-2011 taxes that would have been paid or accrued had the section 902 corporation not been subject to tax on income from the U.S. equity hybrid instrument. The related income of the issuer of the U.S. equity hybrid instrument is an amount equal to the amounts that are deductible by the issuer for foreign tax purposes, determined without regard to the actual amount of the issuer's earnings and profits.

(iii) U.S. debt hybrid instrument splitter arrangement. If the owner of a U.S. debt hybrid instrument is a covered person with respect to a section 902 corporation that is the issuer of the U.S. debt hybrid instrument, there is a pre-2011 splitter arrangement with respect to the portion of the pre-2011 taxes paid or accrued by the section 902 corporation on income in an amount equal to the interest (including original issue discount) paid or accrued on the instrument that is deductible for U.S. Federal income tax purposes but that does not give rise to a deduction under the laws of a foreign jurisdiction in which the issuer is subject to tax. Pre-2011 split taxes are the pre-2011 taxes paid or accrued by the section 902 corporation on the income that would have

been offset by the interest paid or accrued on the U.S. debt hybrid instrument had such interest been deductible for foreign tax purposes. The related income with respect to a U.S. debt hybrid instrument is the gross amount of the interest income recognized for U.S. Federal income tax purposes by the owner of the U.S. debt hybrid instrument, determined without regard to the actual amount of the owner's earnings and profits.

(c) General rules for applying section 909 to pre-2011 split taxes and related income--(1) Annual determination. The determination of related income, other income, pre-2011 split taxes, and other taxes, and the portion of these amounts that were distributed, deemed paid or otherwise transferred or eliminated must be made on an annual basis beginning with the first taxable year of the section 902 corporation beginning after December 31, 1996 (post-1996 taxable year) in which the section 902 corporation paid or accrued a pre-2011 tax with respect to a pre-2011 splitter arrangement and ending with the section 902 corporation's last pre-2011 taxable year. Annual amounts of related income and pre-2011 split taxes are aggregated for each separate pre-2011 splitter arrangement.

(2) Separate categories. The determination of annual and aggregate amounts of related income and pre-2011 split taxes with respect to each pre-2011 splitter arrangement must be made for each separate category as defined in §1.904-4(m) of the section 902 corporation, each covered person, and any other person that succeeds to the related income and pre-2011 split taxes. In the case of a pre-2011 splitter arrangement involving a shared loss (as described in paragraph (b)(3) of this section), the amount of the related income in each separate category of the covered person is equal to the amount of income in that separate category that was offset by the shared

loss for foreign tax purposes. In the case of a pre-2011 splitter arrangement involving a U.S. equity hybrid instrument (as described in paragraph (b)(4)(ii) of this section), the related income is assigned to the issuer's separate categories in the same proportions as the pre-2011 split taxes. Earnings and profits, including related income, are assigned to separate categories under the rules of §§1.904-4, 1.904-5, and 1.904-7. Foreign income taxes, including pre-2011 split taxes, are assigned to separate categories under the rules of §1.904-6. A section 902 shareholder must consistently apply methodologies for determining pre-2011 split taxes and related income with respect to all pre-2011 splitter arrangements.

(d) Special rules regarding related income--(1) Annual adjustments. In the case of each pre-2011 splitter arrangement involving a reverse hybrid or a foreign consolidated group (as described in paragraphs (b)(1) and (2) of this section, respectively), a covered person's aggregate amount of related income must be adjusted each year by the net amount of income and expense attributable to the activities of the covered person that give rise to income included in the foreign tax base, even if the net amount is negative and regardless of whether the section 902 corporation paid or accrued any pre-2011 split taxes in such year.

(2) Effect of separate limitation losses and deficits. Related income is determined without regard to the application of §1.960-1(i)(4) (relating to the effect of separate limitation losses on earnings and profits in another separate category) or section 952(c)(1) (relating to certain earnings and profits deficits).

(3) Pro rata method for distributions out of earnings and profits that include both related income and other income. If the earnings and profits of a covered person

include amounts attributable to both related income and other income, including earnings and profits attributable to taxable years beginning before January 1, 1997, then distributions, deemed distributions, and inclusions out of earnings and profits (for example, under sections 301, 304, 367(b), 951(a), 964(e), 1248, or 1293) of the covered person are considered made out of related income and other income on a pro rata basis. Any reduction of a covered person's earnings and profits that results from a payment on stock that is not treated as a dividend for U.S. Federal income tax purposes (for example, pursuant to section 312(n)(7)) will also reduce related income and other income on a pro rata basis.

(4) Alternative method for distributions out of earnings and profits that include both related income and other income. Solely for purposes of identifying the amount of pre-2011 split taxes of a section 902 corporation that are suspended as of the first day of the section 902 corporation’s first post-2010 taxable year, in lieu of the rule set forth in paragraph (d)(3) of this section, a section 902 shareholder may choose to treat all distributions, deemed distributions, and inclusions out of earnings and profits of a covered person as attributable first to related income. A section 902 shareholder may choose to use this alternative method on a timely filed original income tax return for the first post-2010 taxable year in which the shareholder computes an amount of foreign income taxes deemed paid with respect to a section 902 corporation that paid or accrued pre-2011 split taxes. Such choice by a section 902 shareholder is evidenced by employing the method on its income tax return; the section 902 shareholder need not file a separate statement. A section 902 shareholder that chooses this alternative method must consistently apply it with respect to all pre-2011 splitter arrangements.

(5) Distributions, deemed distributions, and inclusions of related income. Distributions, deemed distributions, and inclusions of related income (including indirectly through a partnership) to persons other than the payor section 902 corporation retain their character as related income with respect to the associated pre-2011 split taxes.

(6) Carryover of related income. Related income carries over to other corporations in the same manner as earnings and profits carry over under section 381, §1.367(b)-7, or similar rules, and retains its character as related income with respect to the associated pre-2011 split taxes.

(7) Related income taken into account by a section 902 shareholder. Related income will be considered taken into account by a section 902 shareholder to the extent that the related income is recognized as gross income by the section 902 shareholder, or by an affiliated corporation described in paragraph (d)(9) of this section, upon a distribution, deemed distribution, or inclusion (such as under section 951(a)) out of the earnings and profits of the covered person attributable to such related income.

(8) Related income taken into account by a payor section 902 corporation. Related income will be considered taken into account by a payor section 902 corporation to the extent that:

(i) The related income is reflected in the earnings and profits of such section 902 corporation for U.S. Federal income tax purposes by reason of a distribution, deemed distribution, or inclusion out of the earnings and profits of the covered person attributable to such related income; or

(ii) The related income is reflected as a positive adjustment to the earnings and profits of such section 902 corporation for U.S. Federal income tax purposes by reason

of the section 902 corporation and the covered person combining in a transaction described in section 381(a)(1) or (a)(2).

(9) Related income taken into account by an affiliated group of corporations that includes a section 902 shareholder. A section 902 shareholder will be considered to have taken related income into account if one or more members of an affiliated group of corporations (as defined in section 1504) that files a consolidated Federal income tax return that includes the section 902 shareholder takes the related income into account.

(10) Distributions of previously-taxed earnings and profits. Distributions and deemed distributions described in paragraph (d) of this section (including in the case of a section 902 shareholder that has chosen the alternative method described in paragraph (d)(4) of this section) do not include distributions of amounts described in section 959(c)(1) or (c)(2), which are distributed before amounts described in section 959(c)(3).

(e) Special rules regarding pre-2011 split taxes--(1) Taxes deemed paid pro-rata out of pre-2011 split taxes and other taxes. If the pre-2011 taxes of a section 902 corporation include both pre-2011 split taxes and other taxes, then foreign income taxes deemed paid under section 902 or 960 or otherwise removed from post-1986 foreign income taxes in pre-2011 taxable years will be treated as attributable to pre-2011 split taxes and other taxes on a pro-rata basis.

(2) Pre-2011 split taxes deemed paid in pre-2011 taxable years. Pre-2011 split taxes deemed paid in pre-2011 taxable years in connection with a dividend paid to a shareholder described in section 902(b) retain their character as pre-2011 split taxes.

The section 902(b) shareholder will be treated as the payor section 902 corporation with respect to those pre-2011 split taxes.

(3) Carryover of pre-2011 split taxes. Pre-2011 split taxes that carry over to another foreign corporation, including under section 381, §1.367(b)-7 or similar rules, retain their character as pre-2011 split taxes. The transferee foreign corporation will be treated as the payor section 902 corporation with respect to those pre-2011 split taxes.

(4) Determining when pre-2011 split taxes are no longer treated as pre-2011 split taxes. For each pre-2011 splitter arrangement, as related income is taken into account by the payor section 902 corporation or a section 902 shareholder as provided in paragraph (d) of this section, a ratable portion of the associated pre-2011 split taxes will no longer be treated as pre-2011 split taxes. In the case of a pre-2011 splitter arrangement involving a reverse hybrid or a foreign consolidated group (as described in paragraphs (b)(1) and (2) of this section, respectively), if aggregate related income is reduced to zero (other than as a result of a distribution, deemed distribution, or inclusion described in paragraph (d) of this section) or less than zero, pre-2011 split taxes will retain their character as pre-2011 split taxes until the amount of aggregate related income is positive and the related income is taken into account by the payor section 902 corporation or a section 902 shareholder as provided in paragraph (d) of this section.

(f) Rules relating to partnerships and trusts--(1) Taxes paid or accrued by partnerships. In the case of foreign income taxes paid or accrued by a partnership, the taxes will be treated as pre-2011 split taxes to the extent such taxes are allocated to one or more section 902 corporations and would be pre-2011 split taxes if the partner section 902 corporation had paid or accrued the taxes directly on the date such taxes

are included by the section 902 corporation under sections 702 and 706(a). Further, any foreign income taxes subject to section 909 will be suspended in the hands of the partner section 902 corporation.

(2) Section 704(b) allocations. Partnership allocations that satisfy the requirements of section 704(b) and the regulations thereunder will not constitute pre-2011 splitter arrangements except to the extent the arrangement is otherwise described in paragraph (b) of this section (for example, a payment or accrual on a disregarded debt instrument that gives rise to a shared loss).

(3) Trusts. Rules similar to the rules of paragraph (f)(1) of this section will apply in the case of any trust with one or more beneficiaries that is a section 902 corporation.

(g) Interaction between section 909 and other Code provisions--(1) Section 904(c). Section 909 does not apply to excess foreign income taxes that were paid or accrued in pre-2011 taxable years and carried forward and deemed paid or accrued under section 904(c) in a post-2010 taxable year.

(2) Section 905(a). For purposes of determining in post-2010 taxable years the allowable deduction for foreign income taxes paid or accrued under section 164(a), the carryover of excess foreign income taxes under section 904(c), and the extended period for claiming a credit or refund under section 6511(d)(3)(A), foreign income taxes to which section 909 applies are first taken into account and treated as paid or accrued in the year in which the related income is taken into account, and not in the earlier year to which the tax relates (determined without regard to section 909).

(3) Section 905(c). If a redetermination of foreign income taxes claimed as a direct credit under section 901 occurs in a post-2010 taxable year and the foreign tax

redetermination relates to a pre-2011 taxable year, to the extent such foreign tax redetermination increased the amount of foreign income taxes paid or accrued with respect to the pre-2011 taxable year (for example, due to an additional assessment of foreign tax or a payment of a previously accrued tax not paid within two years), section 909 will not apply to such taxes. If a redetermination of foreign tax paid or accrued by a section 902 corporation occurs in a post-2010 taxable year and increases the amount of foreign income taxes paid or accrued by the section 902 corporation with respect to a pre-2011 taxable year (for example, due to an additional assessment of foreign tax or a payment of a previously accrued tax not paid within two years), such taxes will be treated as pre-2011 taxes. Section 909 will apply to such taxes if they are pre-2011 split taxes and the taxes will be suspended in the post-2010 taxable year in which they would otherwise be taken into account as a prospective adjustment to the section 902 corporation's pools of post-1986 foreign income taxes.

(4) Other foreign tax credit provisions. Section 909 does not affect the applicability of other restrictions or limitations on the foreign tax credit under existing law, including, for example, the substantiation requirements of section 905(b).

(h) Effective/applicability date. This section applies to foreign income taxes paid or accrued by section 902 corporations in pre-2011 taxable years for purposes of computing foreign income taxes deemed paid with respect to distributions or inclusions out of earnings and profits of section 902 corporations in taxable years of the section 902 corporation ending after February 9, 2015. See 26 CFR 1.909-6T (revised as of April 1, 2014) for rules applicable to foreign income taxes paid or accrued by section 902 corporations in pre-2011 taxable years for purposes of computing foreign income

taxes deemed paid with respect to distributions or inclusions out of earnings and profits of section 902 corporations in taxable years of the section 902 corporation beginning after December 31, 2010, and ending on or before February 9, 2015.

§1.909-6T [Removed]

Par. 17. Section 1.909-6T is removed.

Rosemary Sereti,

Acting Deputy Commissioner for Services and Enforcement.

Approved: February 4, 2015.

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[FR Doc. 2015-02614 Filed 02/09/2015 at 8:45 am; Publication Date: 02/10/2015]