

§ 1.1502-97A

pre-change losses continues to be subject to the limitation regardless of whether it becomes a member or ceases to be a member of a consolidated group. See § 1.382-5(d) (relating to successive ownership changes and absorption of a section 382 limitation).

[T.D. 8678, 61 FR 33362, June 27, 1996; T.D. 8823, 64 FR 36101, July 2, 1999. Redesignated and amended at T.D. 8824, 64 FR 36126, 36128, July 2, 1999]

§ 1.1502-97A Special rules under section 382 for members under the jurisdiction of a court in a title 11 or similar case. [Reserved]

[T.D. 8678, 61 FR 33364, June 27, 1996. Redesignated by T.D. 8824, 64 FR 36128, July 2, 1999]

§ 1.1502-98A Coordination with section 383 generally applicable for testing dates (or members joining or leaving a group) before June 25, 1999.

The rules contained in §§ 1.1502-91A through 1.1502-96A also apply for purposes of section 383, with appropriate adjustments to reflect that section 383 applies to credits and net capital losses. Similarly, in the case of net capital losses, general business credits, and excess foreign taxes that are pre-change attributes, § 1.383-1 applies the principles of §§ 1.1502-91A through 1.1502-96A. For example, if a loss group has an ownership change under § 1.1502-92A and has a carryover of unused general business credits from a pre-change consolidated return year to a post-change consolidated return year, the amount of the group's regular tax liability for the post-change year that can be offset by the carryover cannot exceed the consolidated section 383 credit limitation for that post-change year, determined by applying the principles of §§ 1.383-1(c)(6) and 1.1502-93A (relating to the computation of the consolidated section 382 limitation).

[T.D. 8678, 61 FR 33364, June 27, 1996. Redesignated and amended by T.D. 8824, 64 FR 36126, 36128, July 2, 1999]

§ 1.1502-99A Effective dates.

(a) *Effective date*—(1) *In general.* Except as provided in § 1.1502-99(b), §§ 1.1502-91A through 1.1502-96A and 1.1502-98A apply to any testing date on or after January 1, 1997, and before June 25, 1999. Sections 1.1502-94A

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through 1.1502-96A also apply on any date on or after January 1, 1997, and before June 25, 1999, on which a corporation becomes a member of a group or on which a corporation ceases to be a member of a loss group (or a loss subgroup).

(2) *Anti-duplication rules for recognized built-in gain.* Section 1.1502-93(c)(2) (relating to recognized built-in gain of a loss group or loss subgroup) applies to taxable years for which the due date for income tax returns (without extensions) is after June 25, 1999.

(b) *Testing period may include a period beginning before January 1, 1997.* A testing period for purposes of §§ 1.1502-91A through 1.1502-96A and 1.1502-98A may include a period beginning before January 1, 1997. Thus, for example, in applying § 1.1502-92A(b)(1)(i) (relating to the determination of an ownership change of a loss group), the determination of the lowest percentage ownership interest of any 5-percent shareholder of the common parent during a testing period ending on a testing date occurring on or after January 1, 1997, takes into account the period beginning before January 1, 1997, except to the extent that the period is more than 3 years before the testing date or is otherwise before the beginning of the testing period. See § 1.1502-92A(b)(1).

(c) *Transition rules*—(1) *Methods permitted*—(i) *In general.* For the period ending before January 1, 1997, a consolidated group is permitted to use any method described in paragraph (c)(2) of this section which is consistently applied to determine if an ownership change occurred with respect to a consolidated net operating loss, a net operating loss carryover (including net operating loss carryovers arising in SRLYs), or a net unrealized built-in loss. If an ownership change occurred during that period, the group is also permitted to use any method described in paragraph (c)(2) of this section which is consistently applied to compute the amount of the section 382 limitation that applies to limit the use of taxable income in any post-change year ending before, on, or after January 1, 1997. The preceding sentence does not preclude the imposition of an additional, lesser limitation due to a subsequent ownership change nor, except as

provided in paragraph (c)(1)(iii) of this section, does it permit the beginning of a new testing period for the loss group.

(ii) *Adjustments to offset excess limitation.* If an ownership change occurred during the period ending before January 1, 1997, and a method described in paragraph (c)(2) of this section was not used for a post-change year, the members (or group) must reduce the section 382 limitation for post-change years for which an income tax return is filed after January 1, 1997, to offset, as quickly as possible, the effects of any section 382 limitation that members took into account in excess of the amount that would have been allowable under §§ 1.1502-91A through 1.1502-96A and 1.1502-98A.

(iii) *Coordination with effective date.* Notwithstanding that a group may have used a method described in paragraph (c)(2)(ii) or (iii) of this section for the period before January 1, 1997, §§ 1.1502-91A through 1.1502-96A and 1.1502-98A apply to any testing date occurring on or after January 1, 1997, for purposes of determining whether there is an ownership change with respect to any losses and, if so, the collateral consequences. Any ownership change of a member other than the common parent pursuant to a method described in paragraph (c)(2)(ii) or (iii) of this section does not cause a new testing period of the loss group to begin for purposes of applying § 1.1502-92A on or after January 1, 1997.

(2) *Permitted methods.* The methods described in this paragraph (c)(2) are:

(i) A method that does not materially differ from the rules in §§ 1.1502-91A through 1.1502-96A and 1.1502-98A (other than those in § 1.1502-95A(c) and (b)(2)(ii) (relating to the apportionment of a section 382 limitation) as they would apply to a corporation that ceases to be a member of the group before January 1, 1997). As the context requires, the method must treat references to rules in current regulations as references to rules in regulations generally effective for taxable years before January 1, 1997. Thus, for example, the taxpayer must treat a reference to § 1.382-4(d) (relating to options) as a reference to § 1.382-2T(h)(4) for any testing date to which § 1.382-2T(h)(4) applies. Similarly, a reference

to § 1.1502-21(c) or 1.1502-21T(c) in effect prior to June 25, 1999, as contained in 26 CFR part 1 revised April 1, 1999, as applicable may be a reference to § 1.1502-21A(c), as appropriate. Furthermore, the method must treat all corporations that were affiliated on January 1, 1987, and continuously thereafter as having met the 5 consecutive year requirement of § 1.1502-91A(d)(2)(i) on any day before January 1, 1992, on which the determination of net unrealized built-in gain or loss of a loss subgroup is made;

(ii) A reasonable application of the rules in section 382 and the regulations thereunder applied to each member on a separate entity basis, treating each member's allocable part of a consolidated net operating loss which is attributable to it under § 1.1502-21(b) or 1.1502-21T(b) in effect prior to June 25, 1999, as contained in 26 CFR part 1 revised April 1, 1999, as applicable as a net operating loss of that member and applying rules similar to § 1.382-8 to avoid duplication of value in computing the section 382 limitation for the member (see § 1.382-8(h) (relating to the effective date and transition rules regarding controlled groups)); or

(iii) A method approved by the Commissioner upon application by the common parent.

(d) *Amended returns.* A group may file an amended return in connection with an ownership change occurring before January 1, 1997, to modify the amount of a section 382 limitation with respect to a consolidated net operating loss, a net operating loss carryover (including net operating loss carryovers arising in SRLYs), or a recognized built-in loss (or gain) only if it files amended returns:

(1) For the earliest taxable year ending after December 31, 1986, in which it had an ownership change, if any, under § 1.1502-92A;

(2) For all subsequent taxable years for which returns have already been filed as of the date of the amended return;

(3) The modification with respect to all members for all taxable years ending in 1987 and thereafter complies with §§ 1.1502-91A through 1.1502-96A and 1.1502-98A; and

(4) The amended return(s) permitted by the applicable statute of limitations is/are filed before March 26, 1997.

(e) *Section 383.* This section also applies for the purposes of section 383, with appropriate adjustments to reflect that section 383 applies to credits and net capital losses.

[T.D. 8678, 61 FR 33364, June 27, 1996, as amended by T.D. 8823, July 2, 1999. Redesignated and amended by T.D. 8824, 64 FR 36126-36128, July 2, 1999]

DUAL CONSOLIDATED LOSSES INCURRED IN TAXABLE YEARS BEGINNING BEFORE OCTOBER 1, 1992

§ 1.1503-2A Dual consolidated loss.

(a) *In general.* This section applies for purposes of determining whether and to what extent the net operating loss of a dual resident corporation incurred in tax years beginning after December 31, 1986, shall be allowed to reduce the taxable income of any other member of the affiliated group. Except as provided in paragraph (c) of this section, any dual consolidated loss of a domestic corporation incurred in taxable years beginning after December 31, 1986, cannot reduce the taxable income of any affiliate of such domestic corporation for that or any other taxable year, regardless of whether those losses offset income of another corporation under the income tax laws of the foreign country and regardless of whether any of the income of any corporation that the loss may reduce in the foreign country is, has been, or will be subject to tax in the United States. This rule shall also apply to preclude the use of a dual consolidated loss to offset any income of an affiliate (whether or not an election to file a consolidated return has been made) by means of a transaction subject to section 381 of the Code. For purposes of the preceding sentence, an "affiliate" means any member of the affiliated group as determined under section 1504(a) without regard to the exceptions contained in section 1504(b) (other than section 1504(b)(3)) relating to includible corporations. Further, this rule shall also apply to preclude the use of a dual consolidated loss of a separate unit by a

domestic corporation upon or as a result of the termination, liquidation, or sale of the separate unit. The following example illustrates the application of this paragraph (a).

Example. P, a domestic corporation, owns all of the outstanding stock of DRC, a domestic corporation. DRC is managed and controlled in Country W, a country which determines the tax residence of corporations according to place of management and control. Therefore, the income of DRC is subject to tax in both the United States and in Country W. There are currently no other corporations in Country W which could use the losses of DRC to offset income under the income tax laws of Country W. P no longer wishes to operate DRC as a separate corporation. Therefore DRC will be liquidated into P under section 332 of the Code. Normally, P, under section 381, would succeed to and take into account DRC's net operating loss carryovers. However, this paragraph (a) prohibits the net operating loss of DRC from reducing P's income (including income of P generated by assets previously held by DRC) for U.S. tax purposes. Therefore, DRC's net operating loss carryovers will not be available to offset P's income unless one of the exceptions described in paragraph (c) of this section applies.

(b) *Definitions.* The following definitions apply for purposes of this section.

(1) *Domestic corporation.* For purposes of this section, the term "domestic corporation" has the meaning assigned to it by sections 7701 (a)(3) and (a)(4) and shall also include any corporation treated as a domestic corporation by the Internal Revenue Code, including, but not limited to, section 269B and section 1504(d). Subject to the rules of paragraph (d) of this section, any separate unit (as defined in paragraph (b)(4) of this section) of a domestic corporation will be treated as a separate domestic corporation (and as a dual resident corporation) for purposes of this section. The following example illustrates the application of this paragraph (b)(1).

Example. A is a domestic corporation with a branch operation in Country X. A is owned by FP, a Country X corporation. Country X allows the Country X branch income and losses of A to be used to offset FP's losses or income. Under paragraph (d) of this section, the branch operations of A in Country X will be treated as a separate domestic corporation and as a dual resident corporation for purposes of this section. See paragraph (d) of this section for the treatment of any dual