October 21, 2025

Internal Revenue Service
CC:PA:LPD:PR (Notice 2025-44)
Office of Associate Chief Counsel (International)
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Re: National Foreign Trade Council Comments on Notice 2025-44

The National Foreign Trade Council (the "NFTC") is writing to provide comments on Notice 2025-44, "Proposed Removal of the Disregarded Payment Loss Rules and Certain Recent Changes to the Dual Consolidated Loss Rules; Extension of Transition Relief" (the "Notice") released by the Department of the Treasury ("Treasury") and the Internal Revenue Service ("IRS") on August 20, 2025.

The NFTC, organized in 1914, is an association of U.S. business enterprises engaged in all aspects of international trade and investment. Our membership covers the full spectrum of industrial, commercial, financial, and service activities. Our members support establishing and maintaining international tax norms that provide certainty to enterprises conducting cross-border operations.

General Comments

We welcome the announcements in the Notice with respect to the forthcoming withdrawal of the final regulations regarding disregarded payment losses ("DPL") rules and extended transitional dual consolidated loss ("DCL") relief related to the Organization for Economic Co-operation and Development ("OECD") global anti-base erosion rules, along with other DCL changes. In line with the OECD Global Tax Deal ("Global Tax Deal") Presidential Memorandum issued on January 20, 2025 ("OECD Presidential Memorandum") and the Directing the Repeal of Unlawful Regulations Presidential Memorandum issued on April 9, 2025 ("Regulation Repeal Presidential Memorandum") along with Executive Order 14219 issued on February 19, 2025, these changes provide equitable relief to U.S. taxpayers pending further developments at the OECD following the June 28, 2025 G7 Statement on Global Minimum Tax announcement ("G7 Statement"). In accordance with the OECD Presidential Memorandum and G7 Statement, we urge Treasury to extend such DCL-Pillar Two relief permanently to ensure U.S. multinationals can continue to operate competitively across the globe.

Notice 2025-44 also announced that Treasury and the IRS are studying "(1) potential revisions to the 'all or nothing' principle, taking into account administrability concerns, and (2) whether, and, if so, how disregarded items should be taken into account for purposes of the DCL rules (for example, in a manner similar to that set forth in §1.904-4(f) for determining foreign branch category income), and request comments on these issues." In line with this invitation for comments, we request that Treasury eliminate the use of the all or nothing principle. The practical application of this rule over the past 30 years has demonstrated that the rationale for its original policy concern is no longer compelling, given the developments that have occurred in both U.S. and foreign law since its original promulgation. It instead

only serves to disadvantage U.S. taxpayers by disallowing deductions that do not run afoul of section 1503(d). Separately, we also encourage Treasury to abstain from adopting any new disregarded payment rules within the DCL regime, especially under Treas. Reg. § 1.904-4(f) on the basis that such rules would fall outside the statutory scope of section 1503(d) while simultaneously adding unnecessary complexity to an already complex framework without a meaningful benefit to the U.S. fisc.

Specific Comments

GloBE Model Rules

We commend Treasury and the IRS for extending the transition period during which the Pillar Two rules are not taken into account for purposes of the DCL regulations to taxable years beginning before January 1, 2028. This extension appropriately mitigates the risk of unintended consequences for U.S. taxpayers while international consensus on the treatment of global minimum taxes continues to evolve.

In line with the OECD Presidential Memorandum, this additional time provided should be used to permanently exclude Qualified Domestic Minimum Top-Up Taxes ("QDMTTs") from consideration under the DCL regime, recognizing that such taxes may not consistently apply to U.S.-based multinationals and operate differently from the foreign income taxes contemplated under section 1503(d). Beyond that policy concern, the fundamental design of top-up taxes further supports their exclusion from the DCL framework. Unlike traditional income taxes, top-up taxes apply only when a jurisdiction's effective rate falls below a specified threshold, and a DCL generally does not affect a taxpayer's liability under such a regime where income is already subject to a sufficient level of taxation. However, should Treasury and the IRS decide not to provide a complete exemption, a more targeted approach, such as excluding jurisdictions with statutory income tax rates above 15 percent, would help ensure that the DCL rules remain focused on preventing genuine instances of double dipping rather than imposing duplicative administrative burdens unrelated to the policy objectives of section 1503(d).

All or Nothing Principle

Notice 2025-44 announces that Treasury is studying "potential revisions to the 'all or nothing principle, taking into account administrability concerns." This principle, contained in Treas. Reg. § 1.1503(d)-3(a), generally provides that an entire DCL is considered as put to a foreign use for section 1503(d) purposes if any portion of the DCL is put to a foreign use.

Since its proposal in 1989 and finalization in 1992, this rule has been met with consistent ire from taxpayers and commentators alike due to its overly broad application that leads to unduly harsh results for U.S. taxpayers, particularly less sophisticated U.S. taxpayers, when compared to foreign taxpayers. The stated reason for its existence centers around concerns of administrative complexity, including the potential need for taxpayers and the IRS to undertake a complex analysis of foreign law to ensure a DCL is not made available for foreign use.

This concern, although understandable at the time of the rule's creation, no longer holds true. Practical application of this rule by taxpayers over the past 30 years has proven that taxpayers are not spared from such an analysis, including complex foreign expense tracking. The IRS' own interpretation of this rule in Chief Counsel Advice Memorandums and Private Letter Rulings further confirms this point by requiring foreign law analyses in order to arrive at the correct DCL conclusion. Add to this other prominent international law developments that have occurred since the rule's first adoption, such as ATAD II and Pillar Two, that require detailed analyses of foreign law, and it becomes clear that the original policy

concern supporting the rule's continued existence is no longer viable. Thus, we encourage Treasury and the IRS to eliminate this rule altogether.

However, if Treasury and the IRS feel strongly that it is a key principle worth retaining, then we recommend it be modified as outlined below to lessen its burdensome effect on U.S. taxpayers while still achieving the intended policy goals of section 1503(d).

Additional Foreign Use Rebuttals

To lessen the harshness of the all or nothing principle, we believe additional rebuttals to the presumption of foreign use should be made available under the DCL regulations as applied to specific portions of a DCL. This could be accomplished under one or more methods, including an item-by-item rebuttal, a pro rata allocation, or a separate unit by separate unit approach.

Under an item-by-item rebuttal, taxpayers would be allowed to demonstrate on an elective basis that certain expense items were not made available to offset income of a foreign corporation.

Under a pro-rata rebuttal approach, taxpayers would be allowed to demonstrate the pro rata portion of a DCL that is not available to offset income of a foreign corporation in the current year or a prior year.

Finally, under an individual separate unit rebuttal, taxpayers would be permitted to demonstrate that none of the expenses or losses associated with a particular separate unit were used to offset the income of a foreign corporation. The portion of any DCL for which the taxpayer successfully makes this showing would not be considered as put to a foreign use and would therefore qualify for the domestic use limitation exception. A separate unit-specific rebuttal would not increase administrative complexity for Treasury or the IRS. It would require only determining whether a separate unit's expenses offset the income of a foreign corporation, using existing attribution rules without requiring additional foreign law analysis. This approach represents a balanced refinement of the 1992 and 2007 regulations, maintaining the combination of separate units per the 2007 regulations, while allowing foreign use to be measured at the individual unit level, in line with the 1992 regulations.

The flexibility of any of the above approaches would better align the regulations with the underlying policy goal of preventing double-dipping while reducing unintended constraints on legitimate business operations. The burden of adequately demonstrating any such rebuttal would still be borne by the taxpayer, thus alleviating Treasury and the IRS' concern over additional administrative complexity while affording taxpayers greater equitable DCL outcomes.

Exclude from DCLs Expenses That Can Never Be Put to a Foreign Use To Better Align with the Statute

Despite section 1503(d)(2)(B) stating that a DCL "shall not include any loss which, under the foreign income tax law, does not offset the income of any foreign corporation," the current DCL regulations provide under Treas. Reg. § 1.1503(d)-5(c)(3)(i) that the foreign tax treatment of an item of income, gain, deduction, or loss, is irrelevant to whether it is part of a DCL. This creates not only a meaningful regulatory misalignment with the plain language of the statute, but also a conceptual misalignment. Amounts that cannot be put to a foreign use cannot, by their very nature, raise DCL double-dipping concerns. Accordingly, Treasury should more clearly permit taxpayers to exclude expenses from a DCL if they can demonstrate that there is no possibility that such expenses may ever be put to a foreign use, such as stock-based compensation expenses that are not deductible under foreign tax law.

De Minimis Exception

Regardless of the adoption of any of the above proposals, we also recommend that the all or nothing principle be adjusted in circumstances where only a de minimis portion of a DCL is made available for foreign use. In those circumstances, rather than the entire DCL getting treated as put to a foreign use, only that de minimis portion would require recapture. This would strike a balance between both taxpayer fairness and administrative convenience by removing the presently harsh DCL foreign use cliff effect for minor and immaterial foreign uses. We defer to the discretion of Treasury and the IRS on how to define the magnitude of this potential threshold.

Deemed Ordering Rule

We commend Treasury and the IRS for reinstating the deemed ordering rule that was previously in effect under Treas. Reg. § 1.1503(d)-3(c)(3). This revision restores consistency with the long-standing policy framework of section 1503(d) and ensures that the DCL rules continue to address only circumstances presenting a genuine risk of double dipping. The deemed ordering rule is an essential counterbalance to the broad "made available" standard for determining foreign use, preserving the principle that a DCL should be considered put to foreign use only when it actually offsets income of a foreign corporation under foreign law.

We further recommend refining the deemed ordering rule to address situations arising in acquisition and integration transactions, particularly where entity classification elections or mid-year structural changes create a technical foreign use absent any real economic offset. In these cases, taxpayers should be permitted to demonstrate that expenses composing a DCL did not, and will not, reduce the taxable income of a foreign corporation in any year. This refinement would prevent deemed foreign uses in purely transitional contexts, thereby aligning the regulations more closely with the underlying policy objective of section 1503(d): preventing true instances of double dipping without discouraging legitimate cross-border business integrations.

Disregarded Payments

The DCL regime is designed to prevent the domestic use of deductions and losses that could result in double-dipping. Because disregarded expenses and losses are not deductible for U.S. tax purposes and solely affect foreign tax bases, they do not cause double-dipping and thus fall outside the intended scope of the DCL rules. There is no indication in the statute that Congress intended Treasury or the IRS to extend the DCL framework to disregarded payments, and such an expansion would not align with the underlying legislative purpose. Accordingly, the DCL regulations should not be used to police disregarded payments.

If Treasury and the IRS nonetheless determine that disregarded payments should be incorporated into the DCL regime, applying principles similar to Treas. Reg. § 1.904-4(f) would be inappropriate. That regulation was not designed to reattribute expenses—the focus of the DCL rules—but rather to reattribute income between branches and owners. Adapting its mechanics to expense reattribution would introduce substantial technical and administrative complexity, likely resulting in distortions that do not reflect true foreign law deductions. Moreover, such an approach would significantly increase compliance burdens by requiring granular tracking and cross-category reporting, while offering little policy benefit. In short, the inclusion of disregarded payments would create administrative inefficiencies without meaningfully enhancing the integrity of the DCL regime.

Conclusion

Again, we appreciate the steps taken in Notice 2025-44, particularly around the extended relief for DCL items under the GloBE Model Rules, while Treasury and the IRS continue to assess this interaction in light of the OECD Presidential Memorandum and the latest OECD developments on Pillar Two., including the G7 statement that US multinationals are excluded from the IIR and UTPR. We also appreciate Treasury and the IRS's reexamination of the continued use of the all or nothing principle for the reasons mentioned above, including through one or more of the suggested modifications, should the rule not be repealed in full. Finally, we discourage Treasury and the IRS from applying a new set of rules under section 1503(d) addressing the treatment of disregarded payments, including under Treas. Reg. § 1.904-4(f), based on the permissible scope of 1503(d) and their lack of meaningful benefit under the DCL regime when paired against their additional administrative complexity. We appreciate the continued dialogue with the business community and thank you for your consideration of our comments. If you have any questions or require further information about the comments in our letter, please contact Anne Gordon, Vice President for International Tax Policy (agordon@nftc.org).