Pine River, MN, Pine River Rgnl, NDB RWY 34, Amdt 2A
Staples, MN, Staples Muni, NDB RWY 14, Amdt 3C
Tarkio, MO, Gould Peterson Muni, Takeoff Minimums and Obstacle DP, Amdt 1
Trenton, MO, Trenton Muni, NDB RWY 18, Amdt 7D, CANCELLED
Trenton, MO, Trenton Muni, NDB RWY 36, Amdt 10B, CANCELLED
Tioga, ND, Tioga Muni, RNAV (GPS) RWY 12, Orig-B
Toledo, OH, Toledo Executive, Takeoff Minimums and Obstacle DP, Amdt 3
Gregory, SD, Gregory Muni—Flynn Fld, RNAV (GPS) RWY 13, Orig-C
Pierre, SD, Pierre Rgnl, ILS OR LOC RWY 31, Amdt 13
Gilmer, TX, Fox Stephens Field-Gilmer Muni, VOR/DME–A, Amdt 1A, CANCELLED
Houston, TX, William P Hobby, Takeoff Minimums and Obstacle DP, Amdt 7
Mount Pleasant, TX, Mount Pleasant Rgnl, VOR/DME–A, Orig-A, CANCELLED
Sulphur Springs, TX, Sulphur Springs Muni, RNAV (GPS) RWY 1, Amdt 1C
Terrell, TX, Terrell Muni, NDB RWY 17, Amdt 4, CANCELLED
Ogden, UT, Ogden-Hinckley, ILS OR LOC RWY 3, Amdt 5A
Newport News, VA, Newport News/Williamsburg Intl, ILS OR LOC RWY 7, Amdt 35
Marshfield, WI, Marshfield Muni, SDF RWY 34, Amdt 7, CANCELLED

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9895]

RIN 1545–BM36

Covered Asset Acquisitions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final Income Tax Regulations under section 901(m) of the Internal Revenue Code (Code) with respect to transactions that generally are treated as asset acquisitions for U.S. income tax purposes and either are treated as stock acquisitions or are disregarded for foreign income tax purposes. These regulations are necessary to provide guidance on applying section 901(m). These regulations affect taxpayers claiming foreign tax credits.

DATES:

Effective date: These regulations are effective on March 23, 2020.

Applicability dates: For dates of applicability, see §§ 1.704–1(b)(1)(ii)(b)(4), 1.901(m)–1(b), 1.901(m)–2(f), 1.901(m)–3(d), 1.901(m)–4(g), 1.901(m)–5(i), 1.901(m)–6(d), 1.901(m)–7(g), and 1.901(m)–8(e).

FOR FURTHER INFORMATION CONTACT: Jeffrey L. Parry at (202) 317–6936 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On December 7, 2016, both a notice of proposed rulemaking by cross-reference in part to temporary regulations (REG–129128–14) (2016 proposed regulations) under sections 901(m) and 704 of the Code and temporary regulations (TD 9800) under section 901(m) were published in the **Federal Register** at 81 FR 88562 and 81 FR 88103. The temporary and proposed regulations include the rules described in Notice 2014–44 (2014–32 I.R.B. 270 (August 4, 2014)) and Notice 2014–45 (2014–34 I.R.B. 388 (August 18, 2014).

A public hearing was not requested, and none was held. However, the Department of the Treasury (Treasury Department) and the IRS received written comments in response to the notice of proposed rulemaking. After consideration of all the comments, the 2016 proposed regulations under section 901(m) are adopted as revised by this Treasury decision. The revisions are discussed in this preamble. This Treasury decision also adopts the 2016 proposed regulations under section 704 without revision. The regulations adopted by this Treasury decision are referred to herein as the ''final regulations.'' Defined terms used in this preamble but not defined herein have the meaning provided in the final regulations.

Summary of Comments and Explanation of Revisions

1. Scope of Covered Asset Acquisitions (CAAs)

Proposed § 1.901(m)–2(b) identifies six categories of transactions that constitute CAAs, three of which are specified in the statute and three of which are additional categories of transactions that are identified as CAAs pursuant to the authority granted under section 901(m)(2)(D).

One comment requested that an exemption to section 901(m) be provided for CAAs in which all or substantially all of the gains and losses with respect to the relevant foreign assets (RFAs) are recognized by members of the U.S.-parented group that includes the section 901(m) payor. The comment suggested that the policies of section 901(m) are not implicated in such a situation because if the same group takes into account the gains on the RFAs up front and then, in the future recognizes offsetting cost recovery items on those assets, over time, the U.S. income tax base is unchanged.

The Treasury Department and IRS agree that an exemption would be appropriate in certain cases, but have determined that the comment's suggestion is overbroad. As proposed by the comment, the exemption would apply to U.S. members of an affiliated group that do not file a consolidated return and to related controlled foreign corporations. This leaves open the possibility of manipulation of foreign tax credits. For example, in the case of affiliated but non-consolidated U.S. entities, the entity recognizing the U.S. gain on the assets up front may be an entity that is exempt from tax under section 501 while the entity recognizing the offsetting cost recovery items may be in a position to take advantage of the excess foreign taxes related to the basis difference.

The Treasury Department and IRS have determined that the exemption should apply only if a domestic section 901(m) payor or a member of its consolidated group recognized the gains or losses or took into account a distributive share of the gains or losses recognized by a partnership for U.S. tax purposes as part of the original CAA. Accordingly, the definition of aggregate basis difference is modified to take into account allocated basis difference adjustments determined based on gain or loss recognized with respect to an RFA as a result of a CAA. See § 1.901(m)–1(a)(1), (6), (48), and (49). For example, if one domestic corporation, USS1, sold a foreign disregarded entity (FDE) that held an asset to another member of its consolidated group, USS2, the transaction is a CAA, because it is an asset sale for U.S. income tax purposes and an acquisition of stock of the FDE for foreign tax purposes. As a result, the asset is an RFA owned by USS2 subject to section 901(m). However, any aggregate basis difference USS2 determines with respect to the RFA will be adjusted to take into account the gain recognized for U.S. income tax purposes by USS1 on the original sale, provided USS1 and USS2 are still members of the same consolidated group in the year the allocated basis difference is determined.

Another comment suggested that the final category of transactions, which includes any asset acquisition for U.S. and foreign income tax purposes that results in an increase in the U.S. basis

without a corresponding increase in the foreign basis, be replaced with one or more specifically defined transactions. The comment recommended that new CAAs be limited to specific transactions that are likely to achieve the same hyping of foreign tax credits as the three categories of CAAs specified in the statute and that typically involve intensive U.S. tax planning. The comment also suggested that if the Treasury Department and IRS found a list of specific transactions to be too limited, they could add an anti-abuse rule that would treat any transaction as a CAA if it was structured with a principal purpose of avoiding the specific categories of transactions set forth in the revised list of transactions.

The Treasury Department and IRS do not agree that the final category of transactions is overbroad. Section 901(m) is designed to address transactions that result in a basis difference for U.S. and foreign income tax purposes. There is no intent test. Proposed § 1.901(m)–7 provides a de minimis exception that relieves the burden of applying section 901(m) to ordinary course transactions below the threshold provided in that rule. The Treasury Department and IRS have determined there is no policy justification for exempting transactions to which this exception does not apply on the grounds that the transaction lacked an intent to hype foreign taxes, and replacing this category of transactions with an anti-abuse rule would inappropriately introduce an intent component that is not required by the statute. Accordingly, the comment is not adopted.

2. Aggregate Basis Difference Carryover

Proposed § 1.901(m)–3(c) provides rules for determining the amount of aggregate basis difference carryover for a given U.S. taxable year of a section 901(m) payor that will be included in the section 901(m) payor's aggregate basis difference for the next U.S. taxable year. The carryover reflects the extent to which the aggregate basis difference for a U.S. taxable year has not yet given rise to a disqualified tax amount.

A comment requested that the aggregate basis difference carryover rule be eliminated due to the increased compliance costs resulting from the added complexity of tracking the carryover amounts. The comment argued that these compliance costs are unjustified, given that Congress enacted an administrable approach in the statute and did not express any intent that carryover rules could apply.

The Treasury Department and IRS have determined that the aggregate basis difference carryover rule is necessary to prevent the avoidance of the purpose of section 901(m), particularly in the case of timing differences. For example, assume a section 901(m) payor that is also a foreign payor has a foreign taxable year ending on March 31 and a U.S. taxable year ending on December 31. Assume further that the section 901(m) payor recognizes foreign gain on the disposition of an RFA on November 30, in U.S. tax year 1. For U.S. income tax purposes, because the disposition occurs in U.S. tax year 1, the section 901(m) payor will have allocated basis difference in U.S. tax year 1, requiring a calculation of a disqualified tax amount. For foreign income tax purposes, the foreign tax on the gain is not imposed until the end of the foreign taxable year, which is March 31, in U.S. tax year 2. Assuming the section 901(m) payor does not pay any other foreign taxes, the disqualified tax amount for U.S. tax year 1 will be zero, because the foreign taxes are not taken into account by the section 901(m) payor for U.S. income tax purposes until U.S. tax year 2. Because the allocated basis difference in U.S. tax year 1 does not give rise to a disqualified tax amount, the aggregate basis difference carryover rule requires that the allocated basis difference be carried into U.S. tax year 2 and be used to calculate a disqualified tax amount with respect to the foreign taxes taken into account in U.S. tax year 2. Without the aggregate basis difference carryover rule, there would be no disqualified tax amount in U.S. tax year 1, because there are not foreign taxes taken into account in that year, and no disqualified tax amount in U.S. tax year 2, because there is no allocated basis difference in that year. This would allow avoidance of the application of section 901(m) to a fact pattern that is clearly meant to be covered by the statute. The aggregate basis difference carryover rule also prevents taxpayers from avoiding the application of section 901(m) by timing dispositions of RFAs to coincide with offsetting unrelated foreign losses. For these reasons, the comment is not adopted.

3. Foreign Basis Election

Basis difference with respect to an RFA is generally equal to the U.S. basis in the RFA immediately after a CAA less the U.S. basis in the RFA immediately before the CAA. Proposed § 1.901(m)–4(c) provides that a taxpayer may instead elect to determine basis difference as the U.S. basis in the RFA immediately after the CAA less the foreign basis in the RFA immediately after the CAA. This is referred to as the foreign basis election. Paragraphs (c) and (g)(3) of proposed § 1.901(m)–4 provide that taxpayers may apply the foreign basis election retroactively to CAAs that have occurred on or after January 1, 2011, provided that the taxpayer applies all of the rest of the rules in the 2016 proposed regulations retroactively, with a few limited exceptions.

One comment suggested that though this consistency requirement is appropriate for tax years that remain open, the requirement is unfair if some tax years of the taxpayer or its affiliates are already closed. The comment recommended the consistency requirement be modified to permit taxpayers to apply the foreign basis election as long as they apply the rules in the 2016 proposed regulations consistently to all relevant tax years that remain open.

The Treasury Department and IRS agree that taxpayers should not be denied the choice to retroactively apply the foreign basis election because a closed tax year is preventing them from satisfying the consistency requirement. However, because the statute of limitations for refunds attributable to foreign tax credits is ten years while the statute of limitations for assessment is generally only three years, the only relevant tax years of the taxpayer or its affiliates that would be closed are the tax years in which a consistent application of the regulations would result in an assessment. The Treasury Department and IRS do not believe taxpayers should be able to obtain the benefits of retroactive application of the regulations while avoiding the negative consequences. Accordingly, while the consistency requirement has been modified to apply only for tax years that remain open, an additional requirement is added that any deficiencies be taken into account that would have resulted from the consistent application of the final regulations for a tax year that is closed. See § 1.901(m)–4(g)(3). For example, assume a taxpayer chooses to make a retroactive foreign basis election that would give rise to a $6 million refund in a prior year that is open under the statute of limitations for refunds but that a consistent retroactive application of another provision of the final regulations would give rise to a $1 million deficiency in another prior year that is closed under the statute of limitations for assessment. In this case, in order to meet the consistency requirement, the taxpayer would need to reduce its refund claim in the open year from $6 million to $5 million to take into account the $1 million deficiency that would have resulted in the closed tax year.

4. Successor Rules

The successor rules in proposed § 1.901(m)–6(b) provide that section 901(m) continues to apply to any unallocated basis difference with respect to an RFA after there is a transfer of the RFA for U.S. income tax purposes, regardless of whether the transfer is a disposition, a CAA, or a non-taxable transaction. For example, if a section 901(m) payor contributes an RFA with respect to a prior CAA to a partnership, any unallocated basis difference in the RFA remains subject to the section 901(m) in the hands of the partnership. One comment suggested that the Treasury Department and IRS consider whether it would be appropriate to apply principles similar to those of section 704(c) to treat the section 901(m) ''taint'' in the RFA as a built-in item that is allocated back to the contributing partner.

The Treasury Department and IRS have considered this comment and determined that the provisions in proposed § 1.901(m)–5 for allocating basis difference to partners in a partnership that owns RFAs reflect the most appropriate approach, whether the RFAs are contributed to the partnership in a successor transaction or the partnership acquires them directly in a CAA. These allocation rules are based on the principle that the partner that takes into account the basis difference is the one that should be subject to section 901(m). For example, if there is a cost recovery amount of 20x due to increased depreciation deductions related to a U.S. basis step-up in a CAA, section 901(m) basically operates to disallow a credit for foreign taxes on that 20x differential created between income for U.S. and foreign tax purposes. The 2016 proposed regulations take the approach that the partner to whom the 20x of increased depreciation is allocated is the one that benefits from the income differential and is therefore the one to whom the section 901(m) disallowance should apply. If some other partner contributed the RFA to the partnership but does not get an allocation of the increased depreciation deductions, the Treasury Department and IRS see no policy reason to nevertheless subject the contributing partner to the section 901(m) disallowance.

5. De Miminis Threshold

Proposed § 1.901(m)–7 describes de minimis rules under which certain basis differences are not taken into account for purposes of section 901(m). In general, under the 2016 proposed regulations, a basis difference with respect to an RFA is not taken into account for purposes of section 901(m) if either (i) the sum of the basis differences for all RFAs with respect to the CAA is less than the greater of $10 million or 10 percent of the total U.S. basis of all RFAs immediately after the CAA; or (ii) the RFA is part of a class of RFAs for which the sum of the basis differences of all RFAs in the class is less than the greater of $2 million or 10 percent of the total U.S. basis of all RFAs in the class immediately after the CAA. The threshold dollar amounts and percentages to meet the de minimis exemptions for related-party CAAs are lower than those for unrelated party CAAs, replacing the terms ''$10 million,'' ''10 percent,'' and ''$2 million'' with the terms ''$5 million,'' ''5 percent,'' and ''$1 million,'' respectively.

One comment expressed the view that the threshold amounts for the de minimis rules were too low, noting that the potential basis differential with respect to transactions of those magnitudes would not generate a sufficient foreign tax credit benefit to justify intensive tax planning. The comment suggested raising the $10 million threshold to $15 million. The comment also recommended eliminating the reduced de minimis thresholds in the context of related-party transactions. The comment argued that the test should be different for related parties only if the fact that the parties are related somehow makes the rules less burdensome than they are for unrelated parties or makes the likelihood of tax arbitrage higher. The comment suggested that this was unlikely to be the case in the context of section 901(m).

Although the Treasury Department and the IRS do not believe that the comment made a compelling argument for increasing the threshold for the cumulative basis difference exemption, the Treasury Department and IRS agree that it is appropriate to extend the scope of the de minimis rules in order to further reduce the burden of compliance with the rules. However, rather than increasing the threshold amount, the Treasury Department and IRS have decided to add an additional exclusion, such that a basis difference with respect to an individual RFA is not taken into account for purposes of section 901(m) if the basis difference is less than $20,000. See § 1.901(m)–7(b)(4). Like the de minimis exceptions contained in the 2016 proposed regulations, this de minimis exception applies independently of the other de minimis exceptions. Moreover, the reduced thresholds for related-party transactions are eliminated, as suggested by the comment. See § 1.901(m)–7(c).

6. Interaction With Section 909

One comment requested adding a priority rule to the regulations to address transactions to which both section 901(m) and section 909 apply, such as, for example, the acquisition of a reverse hybrid with respect to which a section 338 election is made. The acquisition is a CAA under section 901(m), and the reverse hybrid structure is a specified foreign tax credit splitting event under the section 909 regulations. The comment recommended that, given the complexity of the calculation of disqualified tax amounts under section 901(m), those calculations should be made first and section 909 should then be applied to determine whether any of the remaining foreign taxes are suspended.

The Treasury Department and IRS agree with the comment that if section 901(m) and section 909 apply to the same transaction, the section 901(m) calculations should be undertaken before applying section 909. However, the comment's recommendation implied that only the portion of the foreign taxes that are not disqualified under section 901(m) are subject to potential suspension under section 909. The Treasury Department and IRS disagree with this implication. Section 909 defers taking into account foreign taxes for purposes of claiming a foreign tax credit or claiming a deduction. Foreign taxes that are disqualified for foreign tax credit purposes under section 901(m) but remain eligible to be deducted may be subject to deferral under section 909 as well. The comment's suggestion is adopted with these clarifications. See § 1.901(m)–8(d).

7. Changes Related to the Tax Cuts and Jobs Act (TCJA)

The final regulations reflect modifications to the rules contained in the 2016 proposed regulations necessary to reflect statutory changes by the TCJA, Public Law 115–97 (2017). References to section 902 corporations are replaced with references to applicable foreign corporations, which consist of section 902 corporations before the applicability of the TCJA modifications to the foreign tax credit rules and controlled foreign corporations thereafter. See § 1.901(m)–1(a)(7). In addition, a definition of separate category is added and utilized to address the income groupings required under section 960 following TCJA. See § 1.901(m)–1(a)(42).

8. Applicability Dates

The 2016 proposed regulations were generally proposed to apply to CAAs occurring on or after the date of publication of the final regulations. However, the 2016 proposed regulations also provided that taxpayers could rely on the rules therein before they would otherwise be applicable, provided that taxpayers consistently applied proposed § 1.901(m)–2 (excluding § 1.901(m)–2(d)) to all CAAs occurring on or after December 7, 2016, and consistently applied § 1.704–1(b)(4)(viii)(*c*)(*4*)(*v*) through (*vii*), § 1.901(m)–1, and §§ 1.901(m)–3 through 1.901(m)–8 (excluding § 1.901(m)–4(e)) to all CAAs occurring on or after January 1, 2011. For this purpose, persons that are related (within the meaning of section 267(b) or 707(b)) were treated as a single taxpayer.

In order to be consistent with the revised applicability of the foreign basis election, as discussed in Part 3 of this Summary of Comments and Explanation of Revisions section, and allow the rules in the final regulations to be applied retroactively, the final regulations provide that taxpayers may choose to apply the rules before they would otherwise be applicable, provided that the consistency requirements described in the preceding paragraph are met, on any original or amended tax return for each taxable year for which the application of the provisions affects the tax liability and for which the statute of limitations does not preclude assessment or the filing of a claim for refund, as applicable. The relevant tax returns for taxable years ending before March 23, 2020, must be filed no later than March 23, 2021. In the case of taxable years that are not open for assessment, appropriate adjustments must be made to take into account deficiencies that would have resulted from the consistent application of the applicable provisions.

Special Analyses

These final regulations are not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Department of the Treasury and the Office of Management and Budget regarding review of tax regulations.

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. In general, foreign corporations are not considered small entities. Nor are U.S. taxpayers considered small entities to the extent the taxpayers are natural persons or entities other than small entities. Small entities are significantly less likely to engage in the types of transactions addressed by the regulations than U.S. multinational corporations. Moreover, the de minimis rules discussed in Part 5 of the Summary of Comments and Explanation of Revisions section further limit the number of small entities likely to be subject to the regulations.

Pursuant to section 7805(f), the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business. No comments were received.

Drafting Information

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

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

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 removing entries for §§ 1.901(m)–1T through 1.901(m)–8T and § 1.901(m)–5T and adding entries for §§ 1.901(m)–1 through 1.901(m)–8 and § 1.901(m)–5 in numerical order to read as follows:

Authority: 26 U.S.C. 7805.

* * * * *

Sections 1.901(m)–1 through 1.901–8 also issued under 26 U.S.C. 901(m)(7).

Section 1.901(m)–5 also issued under 26 U.S.C. 901(m)(3)(B)(ii).

* * * * *

■ **Par. 2.** Section 1.704–1 is amended by adding paragraphs (b)(1)(ii)(*b*)(*4*) and (b)(4)(viii)(*c*)(*4*)(*v*) through (*vii*) to read as follows:

§ 1.704–1 Partner's distributive share.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(*b*) * * *

(*4*) *Special rules for covered asset acquisitions.* Paragraphs (b)(4)(viii)(*c*)(*4*)(*v*) through (*vii*) of this section apply to covered asset acquisitions (CAAs) (as defined in § 1.901(m)–1(a)(13)) occurring on or after March 23, 2020. Taxpayers may, however, choose to apply paragraphs (b)(4)(viii)(*c*)(*4*)(*v*) through (*vii*) of this section before the date paragraphs (b)(4)(viii)(*c*)(*4*)(*v*) through (*vii*) of this section are applicable provided that they (along with any persons that are related (within the meaning of section 267(b) or 707(b)) to the taxpayer)—

(*i*) Consistently apply paragraphs (b)(4)(viii)(*c*)(*4*)(*v*) through (*vii*) of this section, § 1.901(m)–1, and §§ 1.901(m)–3 through 1.901(m)–8 (excluding § 1.901(m)–4(e)) to all CAAs occurring on or after January 1, 2011, and consistently apply § 1.901(m)–2 (excluding § 1.901(m)–2(d)) to all CAAs occurring on or after December 7, 2016, on any original or amended tax return for each taxable year for which the application of the provisions listed in this paragraph (b)(1)(ii)(*b*)(*4*)(*i*) affects the tax liability and for which the statute of limitations does not preclude assessment or the filing of a claim for refund, as applicable;

(*ii*) File all tax returns described in paragraph (b)(1)(ii)(*b*)(*4*)(*i*) of this section for any taxable year ending on or before March 23, 2020, no later than March 23, 2021; and

(*iii*) Make appropriate adjustments to take into account deficiencies that would have resulted from the consistent application under paragraph (b)(1)(ii)(*b*)(*4*)(*i*) of this section for taxable years that are not open for assessment.

* * * * *

(4) * * *

(viii) * * *

(*c*) * * *

(*4*) * * *

(*v*) *Adjustments related to section 901(m).* If one or more assets owned by a partnership are relevant foreign assets (or RFAs) with respect to a foreign income tax, then, solely for purposes of applying the safe harbor provisions of paragraph (b)(4)(viii)(*a*)(*1*) of this section to allocations of CFTEs with respect to that foreign income tax, the net income in a CFTE category that includes partnership items of income, deduction, gain, or loss attributable to the RFA shall be increased by the amount described in paragraph (b)(4)(viii)(*c*)(*4*)(*vi*) of this section and reduced by the amount described in paragraph (b)(4)(viii)(*c*)(*4*)(*vii*) of this section. Similarly, a partner's CFTE category share of income shall be increased by the portion of the amount described in paragraph (b)(4)(viii)(*c*)(*4*)(*vi*) of this section that is allocated to the partner under § 1.901(m)–5(d) and reduced by the

portion of the amount described in paragraph (b)(4)(viii)(*c*)(*4*)(*vii*) of this section that is allocated to the partner under § 1.901(m)–5(d). The principles of this paragraph (b)(4)(viii)(*c*)(*4*)(*v*) apply similarly when a partnership owns an RFA indirectly through one or more other partnerships. For purposes of this paragraph (b)(4)(viii)(*c*)(*4*)(*v*) and paragraphs (b)(4)(viii)(*c*)(*4*)(*vi*) and (b)(4)(viii)(*c*)(*4*)(*vii*) of this section, basis difference is defined in § 1.901(m)–4, cost recovery amount is defined in § 1.901(m)–5(b)(2), disposition amount is defined in § 1.901(m)–5(c)(2), foreign income tax is defined in § 1.901(m)–1(a)(26), RFA is defined in § 1.901(m)–2(c), U.S. disposition gain is defined in § 1.901(m)–1(a)(52), and U.S. disposition loss is defined in § 1.901(m)–1(a)(53).

(*vi*) *Adjustment amounts for RFAs with a positive basis difference.* With respect to RFAs with a positive basis difference, the amount referenced in paragraph (b)(4)(viii)(*c*)(*4*)(*v*) of this section is the sum of any cost recovery amounts and disposition amounts attributable to U.S. disposition loss that correspond to partnership items that are included in the net income in the CFTE category and that are taken into account for the U.S. taxable year of the partnership under § 1.901(m)–5(d).

(*vii*) *Adjustment amounts for RFAs with a negative basis difference.* With respect to RFAs with a negative basis difference, the amount referenced in paragraph (b)(4)(viii)(*c*)(*4*)(*v*) of this section is the sum of any cost recovery amounts and disposition amounts attributable to U.S. disposition gain that correspond to partnership items that are included in the net income in the CFTE category and that are taken into account for the U.S. taxable year of the partnership under § 1.901(m)–5(d).

* * * * *

■ **Par. 3.** Section 1.901(m)–1 is added to read as follows:

§ 1.901(m)–1 Definitions.

(a) *Definitions.* For purposes of section 901(m), this section, and §§ 1.901(m)–2 through 1.901(m)–8, the following definitions apply:

(1) The term *aggregate basis difference* means, with respect to a foreign income tax and a foreign payor, the sum of the allocated basis differences and the allocated basis difference adjustments for a U.S. taxable year of a section 901(m) payor, plus any aggregate basis difference carryover from the immediately preceding U.S. taxable year of the section 901(m) payor with respect to the foreign income tax and foreign payor, as adjusted under § 1.901(m)–6(c). For purposes of this definition, if foreign law imposes tax on the combined income (within the meaning of § 1.901–2(f)(3)(ii)) of two or more foreign payors, all foreign payors whose items of income, deduction, gain, or loss are included in the U.S. taxable income or earnings and profits of the section 901(m) payor are treated as a single foreign payor. Aggregate basis difference is determined with respect to each separate category.

(2) The term *aggregate basis difference carryover* has the meaning provided in § 1.901(m)–3(c).

(3) The term *aggregated CAA transaction* means a series of related CAAs occurring as part of a plan.

(4) The term *allocable foreign income* means the portion of foreign income of a foreign payor that relates to the foreign income tax amount of the foreign payor that is paid or accrued by, or considered paid or accrued by, a section 901(m) payor.

(5) The term *allocated basis difference* means, with respect to an RFA and a foreign income tax, the sum of the cost recovery amounts and disposition amounts assigned to a U.S. taxable year of the section 901(m) payor under § 1.901(m)–5.

(6) The term *allocated basis difference adjustment* means an adjustment to a section 901(m) payor's allocated basis difference with respect to an RFA and a foreign income tax for a U.S. taxable year. If the RFA has a positive basis difference, the allocated basis difference adjustment is equal to the lesser of the allocated basis difference or the portion of any unallocated CAA gain that corresponds to the CAA gain recognized by the section 901(m) payor or a member of the section 901(m) payor's consolidated group. If the RFA has a negative basis difference, the allocated basis difference adjustment is equal to the greater of the allocated basis difference or the portion of any unallocated CAA loss that corresponds to the CAA loss recognized by the section 901(m) payor or a member of the section 901(m) payor's consolidated group. For purposes of this paragraph, CAA gain or CAA loss recognized by the section 901(m) payor or a member of the section 901(m) payor's consolidated group includes their distributive share of CAA gain or CAA loss recognized by a partnership.

(7) The term *applicable foreign corporation* means—

(i) For taxable years of foreign corporations beginning before January 1, 2018, a section 902 corporation (as defined in section 909(d)(5) (as in effect on December 21, 2017)), and

(ii) For taxable years of foreign corporations beginning after December 31, 2017, a controlled foreign corporation (as defined in section 957).

(8) The term *basis difference* has the meaning provided in § 1.901(m)–4.

(9) The term *CAA gain* means the amount of gain recognized with respect to an RFA for U.S. tax purposes as a result of a CAA.

(10) The term *CAA loss* means the amount of loss recognized with respect to an RFA for U.S. tax purposes as a result of a CAA.

(11) The term *consolidated group* has the meaning provided in § 1.1502–1(h).

(12) The term *cost recovery amount* has the meaning provided in § 1.901(m)–5(b)(2).

(13) The term *covered asset acquisition* (or *CAA*) has the meaning provided in § 1.901(m)–2.

(14) The term *cumulative basis difference exemption* has the meaning provided in § 1.901(m)–7(b)(2).

(15) The term *disposition* means an event (for example, a sale, abandonment, or mark-to-market event) that results in gain or loss being recognized with respect to an RFA for purposes of U.S. income tax or a foreign income tax, or both.

(16) The term *disposition amount* has the meaning provided in § 1.901(m)–5(c)(2).

(17) The term *disqualified tax amount* has the meaning provided in § 1.901(m)–3(b).

(18) The term *disregarded entity* means an entity that is disregarded as an entity separate from its owner, as described in § 301.7701–2(c)(2)(i) of this chapter.

(19) The term *fiscally transparent entity* means an entity, including a disregarded entity, that is fiscally transparent under the principles of § 1.894–1(d)(3) for purposes of U.S. income tax or a foreign income tax (or both).

(20) The term *foreign basis* means the adjusted basis of an asset determined for purposes of a foreign income tax.

(21) The term *foreign basis election* has the meaning provided in § 1.901(m)–4(c).

(22) The term *foreign country creditable tax* (or *FCCT*) means, with respect to a foreign income tax amount, the amount of income, war profits, or excess profits tax paid or accrued to a foreign country or possession of the United States and claimed as a foreign tax credit for purposes of determining the foreign income tax amount. To qualify as a FCCT, the tax imposed by the foreign country or possession must be a foreign income tax or a withholding

tax determined on a gross basis as described in section 901(k)(1)(B).

(23) The term *foreign disposition gain* means, with respect to a foreign income tax, the amount of gain recognized on a disposition of an RFA in determining foreign income, regardless of whether the gain is deferred or otherwise not taken into account currently. Notwithstanding the foregoing, if after a section 743(b) CAA there is a disposition of an asset that is an RFA with respect to that section 743(b) CAA, foreign disposition gain has the meaning provided in § 1.901(m)–5(c)(2)(iii).

(24) The term *foreign disposition loss* means, with respect to a foreign income tax, the amount of loss recognized on a disposition of an RFA in determining foreign income, regardless of whether the loss is deferred or disallowed or otherwise not taken into account currently. Notwithstanding the foregoing, if after a section 743(b) CAA there is a disposition of an asset that is an RFA with respect to that section 743(b) CAA, foreign disposition loss has the meaning provided in § 1.901(m)–5(c)(2)(iii).

(25) The term *foreign income* means, with respect to a foreign income tax, the taxable income (or loss) reflected on a foreign tax return (as properly amended or adjusted), even if the taxable income (or loss) is reported by an entity that is a fiscally transparent entity for purposes of the foreign income tax. If, however, foreign law imposes tax on the combined income (within the meaning of § 1.901–2(f)(3)(ii)) of two or more foreign payors, foreign income means the combined taxable income (or loss) of such foreign payors, regardless of whether such income (or loss) is reflected on a single foreign tax return.

(26) The term *foreign income tax* means an income, war profits, or excess profits tax for which a credit is allowable under section 901 or section 903, except that it does not include any withholding tax determined on a gross basis as described in section 901(k)(1)(B).

(27) The term *foreign income tax amount* means, with respect to a foreign income tax, the amount of tax (including an amount of tax that is zero) reflected on a foreign tax return (as properly amended or adjusted). If foreign law imposes tax on the combined income (within the meaning of § 1.901–2(f)(3)(ii)) of two or more foreign payors, however, a foreign income tax amount means the amount of tax imposed on the combined income, regardless of whether the tax is reflected on a single foreign tax return.

(28) The term *foreign payor* means an individual or entity (including a disregarded entity) subject to a foreign income tax. If foreign law imposes tax on the combined income (within the meaning of § 1.901–2(f)(3)(ii)) of two or more individuals or entities, each such individual or entity is a foreign payor. An individual or entity may be a foreign payor with respect to more than one foreign income tax for purposes of applying section 901(m).

(29) The term *foreign taxable year* means a taxable year for purposes of a foreign income tax.

(30) The term *mid-year transaction* means a transaction in which a foreign payor that is a corporation or a disregarded entity has a change in ownership or makes an election pursuant to § 301.7701–3 to change its entity classification, or a transaction in which a foreign payor that is a partnership terminates under section 708(b)(1), provided in each case that the foreign payor's foreign taxable year does not close as a result of the transaction, and, if the foreign payor is a corporation or a partnership, the foreign payor's U.S. taxable year closes.

(31) The term *prior CAA* has the meaning provided in § 1.901(m)–6(b)(2).

(32) The term *prior section 743(b) CAA* has the meaning provided in § 1.901(m)–6(b)(4)(iii).

(33) The term *relevant foreign asset* (or *RFA*) has the meaning provided in § 1.901(m)–2.

(34) The term *reverse hybrid* has the meaning provided in § 1.909–2(b)(1)(iv).

(35) The term *RFA class exemption* has the meaning provided in § 1.901(m)–7(b)(3).

(36) The term *RFA exemption* has the meaning provided in § 1.901(m)–7(b)(4).

(37) The term *RFA owner (U.S.)* means a person that owns an RFA for U.S. income tax purposes.

(38) The term *RFA owner (foreign)* means an individual or entity (including a disregarded entity) that owns an RFA for purposes of a foreign income tax.

(39) The term *section 338 CAA* has the meaning provided in § 1.901(m)–2(b)(1).

(40) The term *section 743(b) CAA* has the meaning provided in § 1.901(m)–2(b)(3).

(41) The term *section 901(m) payor* means a person eligible to claim the foreign tax credit allowed under section 901(a), regardless of whether the person chooses to claim the foreign tax credit, as well as an applicable foreign corporation. Each member of a consolidated group is a separate section 901(m) payor. If individuals file a joint return, those individuals are treated as a single section 901(m) payor.

(42) The term *separate category* means each separate category described in § 1.904–5(a)(4)(v), and in the case of an applicable foreign corporation described in paragraph (a)(7)(ii) of this section, each income group described in § 1.960–1(d)(2)(ii).

(43) The term *subsequent CAA* has the meaning provided in § 1.901(m)–6(b)(4)(i).

(44) The term *subsequent section 743(b) CAA* has the meaning provided in § 1.901(m)–6(b)(4)(iii).

(45) The term *successor transaction* has the meaning provided in § 1.901(m)–6(b)(2).

(46) The term *tentative disqualified tax amount* has the meaning provided in § 1.901(m)–3(b)(2)(ii).

(47) The term *unallocated basis difference* means, with respect to an RFA and a foreign income tax, the basis difference reduced by the sum of the cost recovery amounts and the disposition amounts that have been computed under § 1.901(m)–5.

(48) The term *unallocated CAA gain* means, with respect to an RFA, the CAA gain reduced by the sum of the allocated basis difference adjustments that have been computed with respect to the RFA.

(49) The term *unallocated CAA loss* means, with respect to an RFA, the CAA loss reduced by the sum of the allocated basis difference adjustments that have been computed with respect to the RFA.

(50) The term *U.S. basis* means the adjusted basis of an asset determined for U.S. income tax purposes.

(51) The term *U.S. basis deduction* has the meaning provided in § 1.901(m)–5(b)(3).

(52) The term *U.S. disposition gain* means the amount of gain recognized for U.S. income tax purposes on a disposition of an RFA, regardless of whether the gain is deferred or otherwise not taken into account currently. Notwithstanding the foregoing, if after a section 743(b) CAA there is a disposition of an asset that is an RFA with respect to that section 743(b) CAA, U.S. disposition gain has the meaning provided in § 1.901(m)–5(c)(2)(iii).

(53) The term *U.S. disposition loss* means the amount of loss recognized for U.S. income tax purposes on a disposition of an RFA, regardless of whether the loss is deferred or disallowed or otherwise not taken into account currently. Notwithstanding the foregoing, if after a section 743(b) CAA there is a disposition of an asset that is an RFA with respect to that section 743(b) CAA, U.S. disposition loss has the meaning provided in § 1.901(m)–5(c)(2)(iii).

(54) The term *U.S. taxable year* means a taxable year as defined in section 7701(a)(23).

(b) *Applicability dates.* (1) Except as provided in paragraph (b)(2) of this section, this section applies to CAAs occurring on or after March 23, 2020.

(2) Paragraphs (a)(8), (12), (13), (15), (16), (18), (19), (23) through (26), (31) through (33), (39), (40), (43) through (45), (47), (50), and (52) through (54) of this section apply to CAAs occurring on or after July 21, 2014, and to CAAs occurring before that date resulting from an entity classification election made under § 301.7701–3 that is filed on or after July 29, 2014, and that is effective on or before July 21, 2014. Paragraphs (a)(8), (12), (13), (15), (16), (18), (19), (23) through (26) through (33), (39), (40), (43) through (45), (47), (50), and (52) through (54) of this section also apply to CAAs occurring on or after January 1, 2011, and before July 21, 2014, other than CAAs occurring before July 21, 2014, resulting from an entity classification election made under § 301.7701–3 that is filed on or after July 29, 2014, and that is effective on or before July 21, 2014, but only if the basis difference (within the meaning of section 901(m)(3)(C)(i)) in one or more RFAs with respect to the CAA had not been fully taken into account under section 901(m)(3)(B) either as of July 21, 2014, or, in the case of an entity classification election made under § 301.7701–3 that is filed on or after July 29, 2014, and that is effective on or before July 21, 2014, before the transactions that are deemed to occur under § 301.7701–3(g) as a result of the change in classification.

(3) Taxpayers may, however, choose to apply provisions in this section before the date such provisions are applicable pursuant to paragraph (b)(1) or (2) of this section, provided that they (along with any persons that are related (within the meaning of section 267(b) or 707(b)) to the taxpayer)—

(i) Consistently apply this section, § 1.704–1(b)(4)(viii)(*c*)(*4*)(*v*) through (*vii*), and §§ 1.901(m)–3 through 1.901(m)–8 (excluding § 1.901(m)–4(e)) to all CAAs occurring on or after January 1, 2011, and consistently apply § 1.901(m)–2 (excluding § 1.901(m)–2(d)) to all CAAs occurring on or after December 7, 2016, on any original or amended tax return for each taxable year for which the application of the provisions listed in this paragraph (b)(3)(i) affects the tax liability and for which the statute of limitations does not preclude assessment or the filing of a claim for refund, as applicable;

(ii) File all tax returns described in paragraph (b)(3)(i) of this section for any taxable year ending on or before March 23, 2020, no later than March 23, 2021; and

(iii) Make appropriate adjustments to take into account deficiencies that would have resulted from the consistent application under paragraph (b)(3)(i) of this section for taxable years that are not open for assessment.

§ 1.901(m)–1T [Removed]

■ **Par. 4.** Section 1.901(m)–1T is removed.

■ **Par. 5.** Section 1.901(m)–2 is added to read as follows:

§ 1.901(m)–2 Covered asset acquisitions and relevant foreign assets.

(a) *In general.* Paragraph (b) of this section sets forth the transactions that are covered asset acquisitions (or CAAs). Paragraph (c) of this section provides rules for identifying assets that are relevant foreign assets (or RFAs) with respect to a CAA. Paragraph (d) of this section provides special rules for identifying CAAs and RFAs with respect to transactions to which paragraphs (b) and (c) of this section do not apply. Paragraph (e) of this section provides examples illustrating the rules of this section, and paragraph (f) of this section provides applicability dates.

(b) *Covered asset acquisitions.* Except as provided in paragraph (d) of this section, the transactions set forth in this paragraph (b) are CAAs.

(1) A qualified stock purchase (as defined in section 338(d)(3)) to which section 338(a) applies (*section 338 CAA*);

(2) Any transaction that is treated as an acquisition of assets for U.S. income tax purposes and treated as an acquisition of stock of a corporation (or disregarded) for foreign income tax purposes;

(3) Any acquisition of an interest in a partnership that has an election in effect under section 754 (*section 743(b) CAA*);

(4) Any transaction (or series of transactions occurring pursuant to a plan) to the extent it is treated as an acquisition of assets for purposes of U.S. income tax and as the acquisition of an interest in a fiscally transparent entity for purposes of a foreign income tax;

(5) Any transaction (or series of transactions occurring pursuant to a plan) to the extent it is treated as a partnership distribution of one or more assets the U.S. basis of which is determined by section 732(b) or 732(d) or to the extent it causes the U.S. basis of the partnership's remaining assets to be adjusted under section 734(b), provided the transaction results in an increase in the U.S. basis of one or more of the assets distributed by the partnership or retained by the partnership without a corresponding increase in the foreign basis of such assets; and

(6) Any transaction (or series of transactions occurring pursuant to a plan) to the extent it is treated as an acquisition of assets for purposes of both U.S. income tax and a foreign income tax, provided the transaction results in an increase in the U.S. basis without a corresponding increase in the foreign basis of one or more assets.

(c) *Relevant foreign asset*—(1) *In general.* Except as provided in paragraph (d) of this section, an RFA means, with respect to a foreign income tax and a CAA, any asset (including goodwill, going concern value, or other intangible) subject to the CAA that is relevant in determining foreign income for purposes of the foreign income tax.

(2) *RFA status with respect to a foreign income tax.* An asset is relevant in determining foreign income if income, deduction, gain, or loss attributable to the asset is taken into account in determining foreign income immediately after the CAA, or would be taken into account in determining foreign income immediately after the CAA if the asset were to give rise to income, deduction, gain, or loss at such time.

(3) *Subsequent RFA status with respect to another foreign income tax.* After a CAA, an asset will become an RFA with respect to another foreign income tax if, pursuant to a plan or series of related transactions that have a principal purpose of avoiding the application of section 901(m), an asset that was not relevant in determining foreign income for purposes of that foreign income tax immediately after the CAA becomes relevant in determining such foreign income. A principal purpose of avoiding section 901(m) will be deemed to exist if income, deduction, gain, or loss attributable to the asset is taken into account in determining such foreign income within the one-year period following the CAA, or would be taken into account in determining such foreign income during such time if the asset were to give rise to income, deduction, gain, or loss within the one-year period.

(d) *Identifying covered asset acquisitions and relevant foreign assets to which paragraphs (b) and (c) of this section do not apply.* For transactions occurring on or after January 1, 2011, and before July 21, 2014, other than transactions occurring before July 21, 2014, resulting from an entity classification election made under § 301.7701–3 of this chapter that is filed on or after July 29, 2014, and that is effective on or before July 21, 2014, the transactions set forth under section

901(m)(2) are CAAs and the assets that are relevant foreign assets with respect to the CAA under section 901(m)(4) are RFAs.

(e) *Examples.* The following examples illustrate the rules of this section:

(1) *Example 1: CAA involving an acquisition of a partnership interest for foreign income tax purposes*—(i) *Facts.* (A) FPS is an entity organized in Country F that is treated as a partnership for both U.S. and Country F income tax purposes. FPS is owned equally by FC1 and FC2, each of which is a corporation organized in Country F and treated as a corporation for both U.S. and Country F income tax purposes. FPS has a single asset, Asset A. USP, a domestic corporation, owns all the interests in DE, a disregarded entity.

(B) Pursuant to the same transaction, USP acquires FC1's interest in FPS, and DE acquires FC2's interest in FPS. For U.S. income tax purposes, with respect to USP, the acquisition of the interests in FPS is treated as the acquisition of Asset A by USP. See Rev. Rul. 99–6, 1999–1 C.B. 432. For Country F tax purposes, the acquisitions of the interests of FPS by USP and DE are treated as acquisitions of partnership interests.

(ii) *Result.* The transaction is a CAA under paragraph (b)(4) of this section because it is treated as the acquisition of Asset A for U.S. income tax purposes and the acquisition of interests in a fiscally transparent entity for Country F tax purposes.

(2) *Example 2: CAA involving an asset acquisition for purposes of both U.S. income tax and a foreign income tax*—(i) *Facts.* (A) USP, a domestic corporation, wholly owns CFC1, a foreign corporation, and CFC1 wholly owns CFC2, also a foreign corporation. CFC1 and CFC2 are organized in Country F. CFC1 owns Asset A.

(B) In an exchange described in section 351, CFC1 transfers Asset A to CFC2 in exchange for CFC2 common stock and cash. CFC1 recognizes gain on the exchange under section 351(b). Under section 362(a), CFC2's U.S. basis in Asset A is increased by the gain recognized by CFC1. For Country F tax purposes, gain or loss is not recognized on the transfer of Asset A to CFC2, and therefore there is no increase in the foreign basis in Asset A.

(ii) *Result.* The transaction is a CAA under paragraph (b)(6) of this section because it is treated as an acquisition of Asset A by CFC2 for both U.S. and Country F income tax purposes, and it results in an increase in the U.S. basis of Asset A without a corresponding increase in the foreign basis of Asset A.

(3) *Example 3: RFA status determined immediately after CAA; application of principal purpose rule*—(i) *Facts.* (A) USP1 and USP2 are unrelated domestic corporations. USP1 wholly owns USSub, also a domestic corporation. On January 1 of Year 1, USP2 acquires all of the stock of USSub from USP1 in a qualified stock purchase (as defined in section 338(d)(3)) to which section 338(a) applies. Immediately after the acquisition, none of the income, deduction, gain, or loss attributable to any of the assets of USSub is taken into account in determining foreign income for purposes of a foreign income tax nor would such items be taken into account in determining foreign income for purposes of a foreign income tax immediately after the acquisition if such assets were to give rise to income, deduction, gain, or loss immediately after the acquisition.

(B) On December 1 of Year 1, USSub contributes all its assets to FSub, its wholly owned subsidiary, which is a corporation for both U.S. and Country X income tax purposes, in a transfer described in section 351 (subsequent transfer). USSub recognizes no gain or loss for U.S. or Country X income tax purposes as a result of the subsequent transfer. As a result of the subsequent transfer, income, deduction, gain, or loss attributable to the assets of USSub that were transferred to FSub is taken into account in determining foreign income of FSub for Country X tax purposes.

(ii) *Result.* (A) Under paragraph (b)(1) of this section, the acquisition by USP2 of the stock of USSub is a section 338 CAA. Under paragraph (c)(1) of this section, none of the assets of USSub are RFAs immediately after the CAA, because none of the income, deduction, gain, or loss attributable to such assets is taken into account for purposes of determining foreign income with respect to any foreign income tax immediately after the CAA (nor would such items be taken into account for purposes of determining foreign income immediately after the CAA if such assets were to give rise to income, deduction, gain, or loss at such time).

(B) Although the subsequent transfer is not a CAA under paragraph (b) of this section, the subsequent transfer causes the assets of USSub to become relevant in the hands of FSub in determining foreign income for Country X tax purposes. Because the subsequent transfer occurred within the one-year period following the CAA, it is presumed to have a principal purpose of avoiding section 901(m) under paragraph (c)(3) of this section. Accordingly, the assets of USSub with respect to the CAA occurring on January 1 of Year 1 become RFAs with respect to Country X tax as a result of the subsequent transfer. Thus, a basis difference with respect to Country X tax must be computed for the RFAs and taken into account under section 901(m).

(f) *Applicability dates.* (1) Except as provided in paragraph (f)(2) of this section, this section applies to CAAs occurring on or after March 23, 2020.

(2) Paragraphs (a), (b)(1) through (3), and (c)(1) of this section apply to transactions occurring on or after July 21, 2014, and to transactions occurring before that date resulting from an entity classification election made under § 301.7701–3 of this chapter that is filed on or after July 29, 2014, and that is effective on or before July 21, 2014. Paragraph (d) of this section applies to transactions occurring on or after January 1, 2011, and before July 21, 2014, other than transactions occurring before July 21, 2014, resulting from an entity classification election made under § 301.7701–3 of this chapter that is filed on or after July 29, 2014, and that is effective on or before July 21, 2014.

(3) Taxpayers may, however, choose to apply provisions in this section before the date such provisions are applicable pursuant to paragraph (f)(1) or (2) of this section, provided that they (along with any persons that are related (within the meaning of section 267(b) or 707(b)) to the taxpayer)—

(i) Consistently apply this section (excluding paragraph (d) of this section) to all CAAs occurring on or after December 7, 2016 and consistently apply § 1.704–1(b)(4)(viii)(*c*)(*4*)(*v*) through (*vii*), § 1.901(m)–1, and §§ 1.901(m)–3 through 1.901(m)–8 (excluding § 1.901(m)–4(e)) to all CAAs occurring on or after January 1, 2011, on any original or amended tax return for each taxable year for which the application of the provisions listed in this paragraph (f)(3)(i) affects the tax liability and for which the statute of limitations does not preclude assessment or the filing of a claim for refund, as applicable;

(ii) File all tax returns described in paragraph (f)(3)(i) of this section for any taxable year ending on or before March 23, 2020, no later than March 23, 2021; and

(iii) Make appropriate adjustments to take into account deficiencies that would have resulted from the consistent application under paragraph (f)(3)(i) of this section for taxable years that are not open for assessment.

§ 1.901(m)–2T [Removed]

■ **Par. 6.** Section 1.901(m)–2T is removed.

■ **Par. 7.** Section 1.901(m)–3 is added to read as follows:

§ 1.901(m)–3 Disqualified tax amount and aggregate basis difference carryover.

(a) *In general.* If a section 901(m) payor has an aggregate basis difference, with respect to a foreign income tax and a foreign payor, for a U.S. taxable year, the section 901(m) payor must determine the portion of a foreign income tax amount that is disqualified under section 901(m) (*disqualified tax amount*). Paragraph (b) of this section provides rules for determining the disqualified tax amount. Paragraph (c) of this section provides rules for determining what portion, if any, of aggregate basis difference will be carried forward to the next U.S. taxable year (*aggregate basis difference carryover*). Paragraph (d) of this section provides applicability dates.

(b) *Disqualified tax amount*—(1) *In general.* A section 901(m) payor's disqualified tax amount is not taken into account in determining the credit allowed under section 901(a). If the section 901(m) payor is an applicable foreign corporation, the disqualified tax amount is not taken into account for purposes of section 902 (for tax years of foreign corporations beginning before January 1, 2018) or 960. Sections 78 and 275 do not apply to the disqualified tax amount. The disqualified tax amount is allowed as a deduction to the extent otherwise deductible. See sections 164, 212, and 964 and the regulations under those sections.

(2) *Determination of disqualified tax amount*—(i) *In general.* Except as provided in paragraph (b)(2)(iv) of this section, the disqualified tax amount is equal to the lesser of the foreign income tax amount that is paid or accrued by, or considered paid or accrued by, the section 901(m) payor for the U.S. taxable year or the tentative disqualified tax amount. All calculations are determined with respect to each separate category.

(ii) *Tentative disqualified tax amount.* The tentative disqualified tax amount is equal to the amount determined under paragraph (b)(2)(ii)(A) of this section reduced (but not below zero) by the amount described in paragraph (b)(2)(ii)(B) of this section.

(A) The product of—

(*1*) The sum of the foreign income tax amount and the FCCTs that are paid or accrued by, or considered paid or accrued by, the section 901(m) payor, and

(*2*) A fraction, the numerator of which is the aggregate basis difference, but not in excess of the allocable foreign income, and the denominator of which is the allocable foreign income.

(B) The amount of the FCCT that is a disqualified tax amount of the section 901(m) payor with respect to another foreign income tax.

(iii) *Allocable foreign income*—(A) *No allocation required.* Except as provided in paragraph (b)(2)(iii)(D) of this section, if the entire foreign income tax amount is paid or accrued by, or considered paid or accrued by, a single section 901(m) payor, then the allocable foreign income is equal to the entire foreign income, determined with respect to each separate category.

(B) *Allocation required.* Except as provided in paragraph (b)(2)(iii)(D) of this section, if the foreign income tax amount is allocated to, and considered paid or accrued by, more than one person, a section 901(m) payor's allocable foreign income is equal to the portion of the foreign income that relates to the foreign income tax amount allocated to that section 901(m) payor, determined with respect to each separate category.

(C) *Rules for allocations.* This paragraph (b)(2)(iii)(C) provides allocation rules that apply to determine allocable foreign income in certain cases.

(*1*) If the foreign payor is involved in a mid-year transaction and the foreign income tax amount is allocated under § 1.336–2(g)(3)(ii), § 1.338–9(d), or § 1.901–2(f)(4), then, to the extent any portion of the foreign income tax amount is allocated to, and considered paid or accrued by, a section 901(m) payor, the allocable foreign income of the section 901(m) payor is determined in accordance with the principles of § 1.1502–76(b). To the extent the foreign income tax amount is allocated to an entity that is a partnership for U.S. income tax purposes, a portion of the foreign income is first allocated to the partnership in accordance with the principles of § 1.1502–76(b), which is then allocated under the rules of paragraph (b)(2)(iii)(C)(*2*) of this section to determine the allocable foreign income of a section 901(m) payor that owns an interest in the partnership directly or indirectly through one or more other partnerships for U.S. income tax purposes.

(*2*) If the foreign income tax amount is considered paid or accrued by a section 901(m) payor for a U.S. taxable year under § 1.702–1(a)(6), the determination of the allocable foreign income must be consistent with the allocation of the foreign income tax amount that relates to the foreign income. See § 1.704–1(b)(4)(viii).

(*3*) If the foreign income tax amount that is allocated to, and considered paid or accrued by, a section 901(m) payor for a U.S. taxable year is determined under § 1.901–2(f)(3)(i), the allocable foreign income is determined in accordance with § 1.901–2(f)(3)(iii).

(D) *Failure to substantiate allocable foreign income.* If, pursuant to section 901(m)(3)(A), a section 901(m) payor fails to substantiate its allocable foreign income to the satisfaction of the Secretary, then allocable foreign income will equal the amount determined by dividing the sum of the foreign income tax amount and the FCCTs that are paid or accrued by, or considered paid or accrued by, the section 901(m) payor, by the highest marginal tax rate applicable to income of the foreign payor under foreign tax law.

(iv) *Special rule.* A section 901(m) payor's disqualified tax amount is zero for a U.S. taxable year if:

(A) The section 901(m) payor's aggregate basis difference for the U.S. taxable year is a negative amount;

(B) Foreign income is less than or equal to zero for the foreign taxable year of the foreign payor; or

(C) The foreign income tax amount that is paid or accrued by, or considered paid or accrued by, the section 901(m) payor for the U.S. taxable year is zero.

(3) *Examples.* The following examples illustrate the rules of paragraph (b)(2) of this section. For purposes of all the examples, unless otherwise specified: USP is a domestic corporation. CFC1, CFC2, DE1, and DE2 are organized in Country F and are treated as corporations for Country F tax purposes. CFC1 and CFC2 are applicable foreign corporations. DE1 and DE2 are disregarded entities. USP, CFC1, and CFC2 each have a calendar year for both U.S. and Country F income tax purposes, and DE1 and DE2 each have a calendar year for Country F tax purposes. Country F and Country G each impose a single tax that is a foreign income tax. CFC1, CFC2, DE1, and DE2 each have a functional currency of the u with respect to all activities. At all relevant times, 1u equals $1. All amounts are stated in millions. The examples assume that the applicable cost recovery method for property results in basis being recovered ratably over the life of the property beginning on the first day of the U.S. taxable year in which the property is acquired or placed into service; there is a single separate category with respect to a foreign income and foreign income tax amount; and a section 901(m) payor properly substantiates its allocable foreign income to the satisfaction of the Secretary.

(i) *Example 1: Determining aggregate basis difference; multiple foreign payors*—(A) *Facts.* CFC1 wholly owns CFC2 and DE1. DE1 wholly owns DE2. Assume that the tax laws of Country F do not allow combined income reporting or the filing of consolidated income tax returns. Accordingly, CFC1, CFC2, DE1, and DE2 file separate tax returns for Country F tax purposes. USP acquires all of the stock of CFC1 in a qualified stock purchase (as defined in section 338(d)(3)) to which section 338(a) applies for both CFC1 and CFC2.

(B) *Result.* (*1*) The acquisition of CFC1 gives rise to four separate CAAs under § 1.901(m)–2(b). The acquisition of the stock of CFC1 and the deemed purchase of the stock of CFC2 under section 338(h)(3)(B) are each a section 338 CAA under § 1.901(m)–2(b)(1). Furthermore, because the deemed purchase of the assets of DE1 and DE2 for U.S. income tax purposes is disregarded for Country F tax purposes, each acquisition is a CAA under § 1.901(m)–2(b)(2). Because these four CAAs occur pursuant to a plan, under § 1.901(m)–1(a)(3) they are part of an

aggregated CAA transaction. Under § 1.901(m)–1(a)(37), CFC1 is the RFA owner (U.S.) with respect to its assets and those of DE1 and DE2. CFC2 is the RFA owner (U.S.) with respect to its assets. Under § 1.901(m)–1(a)(28), CFC1, CFC2, DE1, and DE2 are each a foreign payor for Country F tax purposes. Under § 1.901(m)–1(a)(41), CFC1 is the section 901(m) payor with respect to foreign income tax amounts for which CFC1, DE1, and DE2 are the foreign payors (see § 1.901–2(f)(1) and (f)(4)(ii)). CFC2 is the section 901(m) payor with respect to foreign income tax amounts for which CFC2 is the foreign payor (see § 1.901–2(f)(1)).

(*2*) In determining aggregate basis difference under § 1.901(m)–1(a)(1) for a U.S. taxable year of CFC1, CFC1 has three computations with respect to Country F tax, because there are three foreign payors for Country F tax purposes whose foreign income tax amount, if any, is considered paid or accrued by CFC1 as the section 901(m) payor. Furthermore, for each U.S. taxable year, CFC1 will compute a separate disqualified tax amount and aggregate basis difference carryover (if any) under paragraph (b)(2) of this section, with respect to each foreign payor.

(*3*) In determining aggregate basis difference for a U.S. taxable year of CFC2 under § 1.901(m)–1(a)(1), CFC2 has a single computation with respect to Country F tax, because there is a single foreign payor (CFC2) for Country F tax purposes whose foreign income tax amount, if any, is considered paid or accrued by CFC2 as the section 901(m) payor. Furthermore, for each U.S. taxable year, CFC2 will compute a disqualified tax amount and aggregate basis difference carryover (if any) under paragraph (b)(2) of this section.

(C) *Alternative facts.* Assume the same facts as in paragraph (b)(3)(i)(A) of this section (paragraph (A) of this *Example 1*), except that foreign income for Country F tax purposes is based on combined income (within the meaning of § 1.901–2(f)(3)(ii)) of CFC1, CFC2, DE1, and DE2. For purposes of determining an aggregate basis difference for a U.S. taxable year of CFC1 under § 1.901(m)–1(a)(1), CFC1, DE1, and DE2 are treated as a single foreign payor because all of the items of income, deduction, gain, or loss with respect to CFC1, DE1, and DE2 are included in the earnings and profits of CFC1 for U.S. income tax purposes. For each U.S. taxable year, CFC1 will therefore compute a single aggregate basis difference, disqualified tax amount, and aggregate basis difference carryover. The result for CFC2 under the alternative facts is the same as in paragraph (b)(3)(i)(B)(*3*) (paragraph (B)(*3*) of this *Example 1*).

(ii) Example 2: Computation of disqualified tax amount—(A) *Facts.* On December 31 of Year 0, USP acquires all of the stock of CFC1 in a qualified stock purchase (as defined in section 338(d)(3)) to which section 338(a) applies (Acquisition). CFC1 owns four assets (Asset A, Asset B, Asset C, and Asset D, and collectively, Assets) and conducts activities in Country F and in a Country G branch. The activities conducted by CFC1 in Country G are not subject to tax in Country F. The tax rate is 25% in Country F and 30% in Country G. For Country F tax purposes, CFC1's foreign income and foreign income tax amount for each foreign taxable year 1 through 15 is 100u and $25 (25u translated at the exchange rate of $1 = 1u), respectively. For Country G tax purposes, CFC1's foreign income and foreign income tax amount for each foreign taxable year 1 through 5 is 400u and $120 (120u translated at the exchange rate of $1 = 1u), respectively. No dispositions occur for any of the Assets during the applicable cost recovery period. Additional facts relevant to each of the Assets are summarized below.

Assets	Relevant foreign income tax	Basis difference	Applicable cost recovery period (years)	Cost recovery amount
Asset A	Country F tax	150u	15	10u (150u/15).
Asset B	Country F tax	50u	5	10u (50u/5).
Asset C	Country G tax	300u	5	60u (300u/5).
Asset D	Country G tax	(100u)	5	negative 20u (negative 100/5).

(B) *Result.* (*1*) Under § 1.901(m)–2(b)(1), the acquisition of the stock of CFC1 is a section 338 CAA. Under § 1.901(m)–2(c)(1), Assets A and B are RFAs with respect to Country F tax, because they are relevant in determining foreign income of CFC1 for Country F tax purposes and were owned by CFC1 when the Acquisition occurred. Assets C and D are RFAs with respect to Country G tax, because they are relevant in determining foreign income of CFC1 for Country G tax purposes and were owned by CFC1 when the Acquisition occurred. Under § 1.901(m)–1(a)(37), CFC1 is the RFA owner (U.S.) with respect to all of the RFAs. Under § 1.901(m)–1(a)(41) and (28), CFC1 is the section 901(m) payor and the foreign payor for Country F and Country G tax purposes.

(*2*) In determining aggregate basis difference for a U.S. taxable year of CFC1, CFC1 has two computations, one with respect to Country F tax and one with respect to Country G tax. Under § 1.901(m)–1(a)(1), the aggregate basis difference for a U.S. taxable year with respect to Country F tax is equal to the sum of the allocated basis differences and allocated basis difference adjustments with respect to Assets A and B for the U.S. taxable year. Under § 1.901(m)–1(a)(5), allocated basis differences are the sum of cost recovery amounts and disposition amounts. Because there are no dispositions, the only allocated basis differences taken into account in determining an aggregate basis difference are cost recovery amounts. Under § 1.901(m)–5(b), any cost recovery amounts are attributed to CFC1, because CFC1 is the section 901(m) payor and RFA owner (U.S.) with respect to all of the Assets. For each U.S. taxable year, CFC1 will compute a separate disqualified tax amount and aggregate basis difference carryover (if any) with respect to Country F tax and Country G tax under paragraph (b)(2) of this section. For purposes of both disqualified tax amount computations, because CFC1 is the section 901(m) payor and foreign payor, the foreign income tax amount paid or accrued by CFC1 with respect to Country F tax and Country G tax, respectively, will be the entire foreign income tax amount and CFC1's allocable foreign income will be the entire foreign income.

(*3*) With respect to Country F tax, in U.S. taxable years 1 through 5, CFC1 has an aggregate basis difference of 20u each year (10u cost recovery amount with respect to Asset A plus 10u cost recovery amount with respect to Asset B). For U.S. taxable years 1 through 5, under paragraph (b)(2) of this section, the disqualified tax amount each year is $5, the lesser of two amounts: the tentative disqualified tax amount, in this case, $5 ($25 foreign income tax amount × (20u aggregate basis difference/100u allocable foreign income)), or the foreign income tax amount paid or accrued by CFC1, in this case, $25. After U.S. taxable year 5, Asset B has no unallocated basis difference with respect to Country F tax. Accordingly, in U.S. taxable years 6 through 15, CFC1 has an aggregate basis difference of 10u each year. Accordingly, for U.S. taxable years 6 through 15, the disqualified tax amount each year is $2.50, the lesser of two amounts: the tentative disqualified tax amount, in this case, $2.50 ($25 foreign income tax amount × (10u aggregate basis difference/100u allocable foreign income)), or the foreign income tax amount paid or accrued by CFC1, in this case, $25. After U.S. taxable year 15, Asset A has no unallocated basis difference with respect to Country F tax and, therefore, CFC1 has no disqualified tax amount with respect to Country F Tax.

(*4*) With respect to Country G tax, in U.S. taxable years 1 through 5, CFC1 has an aggregate basis difference of 40u each year (60u cost recovery amount with respect to Asset C + (20u) cost recovery amount with respect to Asset D). For U.S. taxable years 1 through 5, under paragraph (b)(2) of this

section, the disqualified tax amount each year is $12, the lesser of two amounts: the tentative disqualified tax amount, in this case, $12 ($120 foreign income tax amount × (40u aggregate basis difference/400u allocable foreign income)), or the foreign income tax amount paid or accrued by CFC1, in this case, $120. After U.S. taxable year 5, Asset C and Asset D have no unallocated basis difference with respect to Country G tax. Accordingly, in U.S. taxable years 6 through 15, CFC1 has no disqualified tax amount with respect to Country G Tax.

(iii) *Example 3: FCCT*—(A) *Facts.* In U.S. taxable year 1, USP acquires all of the interests in DE1 in a transaction (Transaction) that is treated as a stock acquisition for Country F tax purposes. Immediately after the Transaction, DE1 owns assets (Pre-Transaction Assets), all of which are used in a Country G branch and give rise to income that is taken into account for Country F tax and Country G tax purposes. After the Transaction, DE1 acquires additional assets (Post-Transaction Assets), which are not used by the Country G branch. Both Country F and Country G have a tax rate of 30%. Country F imposes worldwide tax on its residents and provides a foreign tax credit for taxes paid to other jurisdictions. In foreign taxable year 3, 100u of income is attributable to DE1's Post-Transaction Assets and 100u of income is attributable to DE1's Pre-Transaction Assets. For Country G tax purposes, the foreign income is 100u and foreign income tax amount is 30u (30% × 100u). For Country F tax purposes, the foreign income is 200u and the pre-foreign tax credit tax is 60u (30% × 200u). The 60u of Country F pre-foreign tax credit tax is reduced by the 30u foreign income tax amount imposed for Country G tax purposes. Thus, the foreign income tax amount for Country F tax purposes is $30 (30u translated into dollars at the exchange rate of $1 = 1u). Assume that for U.S. taxable year 3 USP has 100u aggregate basis difference with respect to Country F tax and 100u aggregate basis difference with respect to Country G tax. USP does not dispose of DE1 or any assets of DE1 in U.S. taxable year 3.

(B) *Result.* (*1*) Under § 1.901(m)–2(b)(2), the Transaction is a CAA. Under § 1.901(m)–2(c)(1), the Pre-Transaction Assets are RFAs with respect to both Country F tax and Country G tax, because they are relevant in determining the foreign income of DE1 for Country F tax and Country G tax purposes and were owned by DE1 when the Transaction occurred. Under § 1.901(m)–1(a)(37), USP is the RFA owner (U.S.) with respect to the RFAs. Under § 1.901(m)–1(a)(28), DE1 is a foreign payor for Country F tax and Country G tax purposes. Under § 1.901(m)–1(a)(41), USP is the section 901(m) payor with respect to foreign income tax amounts for which DE1 is the foreign payor (see § 1.901–2(f)(4)(ii)). Because the Country G foreign income tax amount is claimed as a credit for purposes of determining the Country F foreign income tax amount, the Country G foreign income tax amount is an FCCT under § 1.901(m)–1(a)(22).

(*2*) Under § 1.901(m)–1(a)(1), for each U.S. taxable year, USP will separately compute the aggregate basis difference with respect to Country F tax and with respect to Country G tax and will use those amounts to separately compute a disqualified tax amount and aggregate basis difference carryover (if any) with respect to each foreign income tax. Because DE1 is a disregarded entity owned by USP during the entire U.S. taxable year 3, the foreign income tax amount paid or accrued by DE1 is not subject to allocation. Accordingly, for purposes of each of the disqualified tax amount computations, the foreign income tax amount paid or accrued by USP with respect to Country F tax and Country G tax, respectively, is the entire foreign income tax amount paid or accrued by DE1, and, under paragraph (b)(2)(iii)(A) of this section, USP's allocable foreign income will be equal to DE1's entire foreign income.

(*3*) As stated in paragraph (b)(3)(iii)(A) of this section (paragraph (A) of this *Example 3*), for U.S. taxable year 3 USP has 100u aggregate basis difference with respect to Country F tax and 100u aggregate basis difference with respect to Country G tax. With respect to Country G tax, in U.S. taxable year 3, under paragraph (b)(2) of this section, the disqualified tax amount is $30, the lesser of the two amounts: the tentative disqualified tax amount, in this case, $30 ($30 foreign income tax amount × (100u aggregate basis difference/100u allocable foreign income)), or the foreign income tax amount considered paid or accrued by USP, in this case, $30.

(*4*) With respect to Country F tax, in U.S. taxable year 3, under paragraph (b)(2) of this section, the disqualified tax amount is $0, the lesser of two amounts: the tentative disqualified tax amount, in this case $0 (($30 foreign income tax amount + $30 Country G FCCT) × (100u aggregate basis difference/200u foreign income) = $30 reduced by $30 Country G FCCT that is a disqualified tax amount of USP), or the foreign income tax amount considered paid or accrued by USP, in this case, $30.

(c) *Aggregate basis difference carryover*—(1) *In general.* If a section 901(m) payor has an aggregate basis difference carryover for a U.S. taxable year, as determined under this paragraph (c), the aggregate basis difference carryover is taken into account in computing the section 901(m) payor's aggregate basis difference for the next U.S. taxable year. For successor rules that apply to an aggregate basis difference carryover, see § 1.901(m)–6(c).

(2) *Amount of aggregate basis difference carryover.* (i) If a section 901(m) payor's disqualified tax amount is zero, all of the section 901(m) payor's aggregate basis difference (positive or negative) for the U.S. taxable year gives rise to an aggregate basis difference carryover to the next U.S. taxable year.

(ii) If a section 901(m) payor's disqualified tax amount is not zero, then aggregate basis difference carryover can arise in either or both of the following two situations:

(A) If a section 901(m) payor's aggregate basis difference for the U.S. taxable year exceeds its allocable foreign income, the excess gives rise to an aggregate basis difference carryover.

(B) If the tentative disqualified tax amount exceeds the disqualified tax amount, the excess tentative disqualified tax amount is converted into aggregate basis difference carryover by multiplying such excess by a fraction, the numerator of which is the allocable foreign income, and the denominator of which is the sum of the foreign income tax amount and the FCCTs that are paid or accrued by, or considered paid or accrued by, the section 901(m) payor.

(3) *Example.* The following example illustrates the rules of paragraph (c) of this section.

(i) *Facts.* (A) On July 1 of Year 1, CFC1 acquires all of the interests of DE1 in a transaction (Transaction) that is treated as a stock acquisition for Country F tax purposes. CFC1 and DE1 are organized in Country F and are treated as corporations for Country F tax purposes. CFC1 is an applicable foreign corporation, and DE1 is a disregarded entity. CFC1 has a calendar year for U.S. income tax purposes, and DE1 has a June 30 year-end for Country F tax purposes. Country F imposes a single tax that is a foreign income tax. CFC1 and DE1 each have a functional currency of the u with respect to all activities. Immediately after the Transaction, DE1 owns one asset, Asset A, that gives rise to income that is taken into account for Country F tax purposes. For the first U.S. taxable year (U.S. taxable year 1) there is a cost recovery amount with respect to Asset A of 9u, and for each subsequent U.S. taxable year until the U.S. basis is fully recovered, there is a cost recovery amount with respect to Asset A of 18u. There is no disposition of Asset A.

(ii) *Result.* (A) Under § 1.901(m)–2(b)(2), the Transaction is a CAA. Under § 1.901(m)–2(c)(1), Asset A is an RFA with respect to Country F tax because it is relevant in determining the foreign income of DE1 for Country F tax purposes and was owned by DE1 when the Transaction occurred. Under § 1.901(m)–1(a)(37), CFC1 is the RFA owner (U.S.) with respect to Asset A. Under § 1.901(m)–1(a)(28), DE1 is a foreign payor for Country F tax purposes. Under § 1.901(m)–1(a)(41), CFC1 is the section 901(m) payor with respect to foreign income tax amounts for which DE1 is the foreign payor (see § 1.901–2(f)(4)(ii)).

(B) Under § 1.901(m)–1(a)(1), in determining the aggregate basis difference for U.S. taxable year 1, CFC1 has one computation with respect to Country F tax. Under § 1.901(m)–1(a)(1), aggregate basis difference with respect to Country F tax is equal to the sum of allocated basis differences and allocated basis difference adjustments with respect to all RFAs, which, in this case, is only Asset A. Under § 1.901(m)–1(a)(5), allocated basis differences are the sum of cost recovery amounts and disposition amounts. Because there is no

disposition of Asset A, the only allocated basis difference taken into account in determining an aggregate basis difference are cost recovery amounts with respect to Asset A. Under § 1.901(m)–5(b), any cost recovery amounts are assigned to a U.S taxable year of CFC1, because CFC1 is the section 901(m) payor and RFA owner (U.S.) with respect to Asset A. Under paragraph (b)(2) of this section, for each U.S. taxable year, CFC1 will compute a disqualified tax amount and aggregate basis difference carryover with respect to the aggregate basis difference. Because DE1 is a disregarded entity owned by CFC1, the foreign income tax amount paid or accrued by DE1 is not subject to allocation. Accordingly, for purposes of the disqualified tax amount computation, the foreign income tax amount paid or accrued by CFC1 with respect to Country F tax is the entire foreign income tax amount paid or accrued by DE1, and under paragraph (b)(2)(iii)(A) of this section, CFC1's allocable foreign income will be equal to DE1's entire foreign income.

(C) In U.S. taxable year 1, CFC1 has an aggregate basis difference of 9u (the 9u cost recovery amount with respect to Asset A for U.S. taxable year 1). However, because the foreign taxable year of DE1, the foreign payor, will not end between July 1 and December 31, there will not be a foreign income tax amount for U.S. taxable year 1. Because the foreign income tax amount considered paid or accrued by CFC1 for U.S. taxable year 1 is zero, under paragraph (b)(2)(iv) of this section, the disqualified tax amount for U.S. taxable year 1 of CFC1 is also zero. Furthermore, because the disqualified tax amount is zero, under paragraph (c)(2)(i) of this section, CFC1 has an aggregate basis difference carryover equal to 9u, the entire amount of the aggregate basis difference for U.S. taxable year 1. Under paragraph (c)(1) of this section, the 9u aggregate basis difference carryover is taken into account in computing CFC1's aggregate basis difference for U.S. taxable year 2. Accordingly, in U.S. taxable year 2, CFC1 has an aggregate basis difference of 27u (18u cost recovery amount for U.S. taxable year 2, plus 9u aggregate basis difference carryover from U.S. taxable year 1).

(d) *Applicability dates.* This section applies to CAAs occurring on or after March 23, 2020. Taxpayers may, however, choose to apply this section before the date this section is applicable provided that they (along with any persons that are related (within the meaning of section 267(b) or 707(b)) to the taxpayer)—

(1) Consistently apply this section, § 1.704–1(b)(4)(viii)(*c*)(*4*)(*v*) through (*vii*), § 1.901(m)–1, and §§ 1.901(m)–4 through 1.901(m)–8 (excluding § 1.901(m)–4(e)) to all CAAs occurring on or after January 1, 2011, and consistently apply § 1.901(m)–2 (excluding § 1.901(m)–2(d)) to all CAAs occurring on or after December 7, 2016, on any original or amended tax return for each taxable year for which the application of the provisions listed in this paragraph (d)(1) affects the tax liability and for which the statute of limitations does not preclude assessment or the filing of a claim for refund, as applicable

(2) File all tax returns described in paragraph (d)(1) of this section for any taxable year ending on or before March 23, 2020, no later than March 23, 2021; and

(3) Make appropriate adjustments to take into account deficiencies that would have resulted from the consistent application under paragraph (d)(1) of this section for taxable years that are not open for assessment.

§ 1.901(m)–3T [Removed]

■ **Par. 8.** Section 1.901(m)–3T is removed.

■ **Par. 9.** Section 1.901(m)–4 is added to read as follows:

§ 1.901(m)–4 Determination of basis difference.

(a) *In general.* This section provides rules for determining for each RFA the basis difference that arises as a result of a CAA. A basis difference is computed separately with respect to each foreign income tax for which an asset subject to a CAA is an RFA. Paragraph (b) of this section provides the general rule for determining basis difference that references only U.S. basis in the RFA. Paragraph (c) of this section provides for an election to determine basis difference by reference to foreign basis and sets forth the procedures for making the election. Paragraph (d) of this section provides special rules for determining basis difference in the case of a section 743(b) CAA. Paragraph (e) of this section provides a special rule for determining basis difference in an RFA with respect to a CAA to which paragraphs (b) through (d) of this section do not apply. Paragraph (f) of this section provides examples illustrating the rules of this section, and paragraph (g) of this section provides applicability dates.

(b) *General rule.* Except as otherwise provided in paragraphs (c), (d), and (e) of this section, basis difference is the U.S. basis in the RFA immediately after the CAA, less the U.S. basis in the RFA immediately before the CAA. Basis difference is an attribute that attaches to an RFA.

(c) *Foreign basis election.* (1) An election (*foreign basis election*) may be made to apply section 901(m)(3)(C)(i)(II) by reference to the foreign basis immediately after the CAA instead of the U.S. basis immediately before the CAA. Accordingly, if a foreign basis election is made, basis difference is the U.S. basis in the RFA immediately after the CAA, less the foreign basis in the RFA immediately after the CAA. For this purpose, the foreign basis immediately after the CAA takes into account any adjustment to that foreign basis resulting from the CAA for purposes of the foreign income tax.

(2) Except as otherwise provided in this paragraph (c), a foreign basis election is made by the RFA owner (U.S.). If, however, the RFA owner (U.S.) is a partnership, each partner in the partnership (and not the partnership) may independently make a foreign basis election. In the case of one or more tiered partnerships, the foreign basis election is made at the level at which a partner is not also a partnership.

(3) The foreign basis election may be made separately for each CAA, and with respect to each foreign income tax and each foreign payor. For purposes of making the foreign basis election, all CAAs that are part of an aggregated CAA transaction are treated as a single CAA. Furthermore, for purposes of making the foreign basis election, if foreign law imposes tax on the combined income (within the meaning of § 1.901–2(f)(3)(ii)) of two or more foreign payors, all foreign payors whose items of income, deduction, gain, or loss for U.S. income tax purposes are included in the U.S. taxable income or earnings and profits of a single section 901(m) payor are treated as a single foreign payor.

(4) A foreign basis election is made by using foreign basis to determine basis difference for purposes of computing a disqualified tax amount and an aggregate basis difference carryover for the U.S. taxable year, as provided under § 1.901(m)–3. A separate statement or form evidencing the foreign basis election need not be filed. Except as provided in paragraphs (c)(5) and (6) of this section, in order for a foreign basis election to be effective, the election must be reflected on a timely filed original federal income tax return (taking into account extensions) for the first U.S. taxable year that the foreign basis election is relevant to the computation of any amounts reported on such return, including on any required schedules.

(5) If the RFA owner (U.S.) is a partnership, a foreign basis election reflected on a partner's timely filed amended federal income tax return is also effective if all of the following conditions are satisfied:

(i) The partner's timely filed original federal income tax return (taking into account extensions) for the first U.S. taxable year of the partner in which a foreign basis election is relevant to the computation of any amounts reported

on such return, including on any required schedules, does not reflect the application of section 901(m);

(ii) The information provided by the partnership to the partner for purposes of applying section 901(m) and any information required to be reported by the partnership is based solely on computations that use foreign basis to determine basis difference; and

(iii) Before the due date of the original federal income tax return described in paragraph (c)(5)(i) of this section, the partner delegated the authority to the partnership to choose whether to provide the partner with information to apply section 901(m) using foreign basis, either pursuant to a written partnership agreement (within the meaning of § 1.704–1(b)(2)(ii)(*h*)) or written notice provided by the partner to the partnership.

(6) If, pursuant to paragraph (g)(3) of this section, a taxpayer chooses to have this section apply to CAAs occurring on or after January 1, 2011, a foreign basis election will be effective if the election is reflected on a timely filed amended federal income tax return (or tax returns, as applicable) filed no later than March 23, 2021.

(7) The foreign basis election is irrevocable. Relief under § 301.9100–1 is not available for the foreign basis election.

(d) *Determination of basis difference in a section 743(b) CAA*—(1) *In general.* Except as provided in paragraphs (d)(2) and (e) of this section, if there is a section 743(b) CAA, basis difference is the resulting basis adjustment under section 743(b) that is allocated to the RFA under section 755.

(2) *Foreign basis election.* If a foreign basis election is made with respect to a section 743(b) CAA, then, for purposes of paragraph (d)(1) of this section, the section 743(b) adjustment is determined by reference to the foreign basis of the RFA, determined immediately after the CAA.

(e) *Determination of basis difference in an RFA with respect to a CAA with respect to which paragraphs (b), (c), and (d) of this section do not apply.* For CAAs occurring on or after January 1, 2011, and before July 21, 2014, other than CAAs occurring before July 21, 2014, resulting from an entity classification election made under § 301.7701–3 of this chapter that is filed on or after July 29, 2014, and that is effective on or before July 21, 2014, basis difference in an RFA with respect to the CAA is the amount of any basis difference (within the meaning of section 901(m)(3)(C)(i)) that had not been taken into account under section 901(m)(3)(B) either as of July 21, 2014, or, in the case of an entity classification election made under § 301.7701–3 of this chapter that is filed on or after July 29, 2014, and that is effective on or before July 21, 2014, before the transactions that are deemed to occur under § 301.7701–3(g) as a result of the change in classification.

(f) *Examples.* The following examples illustrate the rules of this section:

(1) *Example 1: Scope of basis choice; identifying separate CAAs, RFA owners (U.S.), and foreign payors in an aggregated CAA transaction*—(i) *Facts.* CFC1 wholly owns CFC2, both of which are applicable foreign corporations, organized in Country F, and treated as corporations for Country F tax purposes. CFC1 also wholly owns DE1, and DE1 wholly owns DE2. DE1 and DE2 are entities organized in Country F treated as corporations for Country F tax purposes and as disregarded entities for U.S. income tax purposes. Country F imposes a single tax that is a foreign income tax. All of the stock of CFC1 is acquired in a qualified stock purchase (within the meaning of section 338(d)(3)) to which section 338(a) applies for both CFC1 and CFC2. For Country F tax purposes, the transaction is treated as an acquisition of the stock of CFC1.

(ii) *Result.* (A) The acquisition of CFC1 gives rise to four separate CAAs described in § 1.901(m)–2. Under § 1.901(m)–2(b)(1), the acquisition of the stock of CFC1 and the deemed acquisition of the stock of CFC2 under section 338(h)(3)(B) are each a section 338 CAA. Furthermore, because the deemed acquisition of the assets of each of DE1 and DE2 for U.S. income tax purposes is disregarded for Country F tax purposes, the deemed acquisitions are CAAs under § 1.901(m)–2(b)(2). Because the four CAAs occurred pursuant to a plan, under § 1.901(m)–1(a)(3), all of the CAAs are part of an aggregated CAA transaction. Under § 1.901(m)–1(a)(37), CFC1 is the RFA owner (U.S.) with respect to its assets and the assets of DE1 and DE2 that are RFAs. CFC2 is the RFA owner (U.S.) with respect to its assets that are RFAs. Under § 1.901(m)–1(a)(28), CFC1, CFC2, DE1, and DE2 are each a foreign payor for Country F tax purposes.

(B) Under paragraph (c) of this section, a foreign basis election may be made by the RFA owner (U.S.). The election is made separately with respect to each CAA (for this purpose, treating all CAAs that are part of an aggregated CAA transaction as a single CAA) and with respect to each foreign income tax and foreign payor. Thus, in this case, CFC1 can make a separate foreign basis election for one or more of the following three groups of RFAs: RFAs that are relevant in determining foreign income of CFC1; RFAs that are relevant in determining foreign income of DE1; and RFAs that are relevant in determining foreign income of DE2. Furthermore, CFC2 can make a foreign basis election for all of its RFAs that are relevant in determining its foreign income.

(2) *Example 2: Scope of basis choice; RFA owner (U.S.) is a partnership*—(i) *Facts.* USPS is a domestic partnership for which a section 754 election is in effect. USPS owns two assets, the stock of DE1 and DE2. DE1 is an entity organized in Country X and treated as a corporation for Country X tax purposes. DE2 is an entity organized in Country Y and treated as a corporation for Country Y tax purposes. DE1 and DE2 are disregarded entities. Country X and Country Y each impose a single tax that is a foreign income tax. US1 and US2, unrelated domestic corporations, and FP, a foreign person unrelated to US1 and US2, acquire partnership interests in USPS from existing partners of USPS pursuant to the same plan.

(ii) *Result.* Under § 1.901(m)–2(b)(3), the acquisitions of the partnership interests in USPS by US1, US2, and FP each give rise to separate section 743(b) CAAs, but under § 1.901(m)–1(a)(3), they are treated as an aggregated CAA transaction because they occur as part of a plan. Under § 1.901(m)–1(a)(37), USPS is the RFA owner (U.S.) with respect to the assets of DE1 and DE2 that are RFAs. Under § 1.901(m)–1(a)(28), DE1 is a foreign payor for Country X tax purposes, and DE2 is a foreign payor for Country Y tax purposes. Because the RFA owner (U.S.) is a partnership, paragraph (c)(2) of this section provides that US1, US2, and FP (the relevant partners in USPS) separately choose whether to make a foreign basis election for purposes of determining basis difference. Furthermore, under paragraph (c)(3) of this section, the choice to make the election is made separately by each partner with respect to each foreign payor. Thus, in this case, each partner may make separate elections for the RFAs that are relevant in determining foreign income of DE1 for Country X tax purposes and the RFAs that are relevant in determining foreign income of DE2 for Country Y tax purposes.

(g) *Applicability dates.* (1) Except as provided in paragraph (g)(2) of this section, this section applies to CAAs occurring on or after March 23, 2020.

(2) Paragraphs (a), (b), and (d)(1) of this section apply to CAAs occurring on or after July 21, 2014, and to CAAs occurring before that date resulting from an entity classification election made under § 301.7701–3 that is filed on or after July 29, 2014, and that is effective on or before July 21, 2014. Paragraph (e) of this section applies to CAAs occurring on or after January 1, 2011, and before July 21, 2014, other than CAAs occurring before July 21, 2014, resulting from an entity classification election made under § 301.7701–3 of this chapter that is filed on or after July 29, 2014, and that is effective on or before July 21, 2014. Taxpayers may, however, consistently apply paragraph (d)(1) of this section to all section 743(b) CAAs occurring on or after January 1, 2011. For this purpose, persons that are related (within the meaning of section 267(b) or 707(b)) will be treated as a single taxpayer.

(3) Taxpayers may, however, choose to apply provisions in this section before the date such provisions are applicable pursuant to paragraph (g)(1)

or (2) of this section, provided that they (along with any persons that are related (within the meaning of section 267(b) or 707(b)) to the taxpayer)—

(i) Consistently apply this section (excluding paragraph (e) of this section), § 1.704–1(b)(4)(viii)(*c*)(*4*)(*v*) through (*vii*), § 1.901(m)–1, § 1.901(m)–3, and §§ 1.901(m)–5 through 1.901(m)–8 to all CAAs occurring on or after January 1, 2011, and consistently apply § 1.901(m)–2 (excluding § 1.901(m)–2(d)) to all CAAs occurring on or after December 7, 2016, on any original or amended tax return for each taxable year for which the application of the provisions listed in this paragraph (g)(3)(i) affects the tax liability and for which the statute of limitations does not preclude assessment or the filing of a claim for refund, as applicable;

(ii) File all tax returns described in paragraph (g)(3)(i) of this section for any taxable year ending on or before March 23, 2020, no later than March 23, 2021; and

(iii) Make appropriate adjustments to take into account deficiencies that would have resulted from the consistent application under paragraph (g)(3)(i) of this section for taxable years that are not open for assessment.

§ 1.901(m)–4T [Removed]

■ **Par. 10.** Section 1.901(m)–4T is removed.

■ **Par. 11.** Section 1.901(m)–5 is added to read as follows:

§ 1.901(m)–5 Basis difference taken into account.

(a) *In general.* This section provides rules for determining the amount of basis difference with respect to an RFA that is taken into account in a U.S. taxable year for purposes of determining the disqualified portion of a foreign income tax amount. Paragraph (b) of this section provides rules for determining a cost recovery amount and assigning that amount to a U.S. taxable year of a single section 901(m) payor when the RFA owner (U.S.) is the section 901(m) payor. Paragraph (c) of this section provides rules for determining a disposition amount and assigning that amount to a U.S. taxable year of a single section 901(m) payor when the RFA owner (U.S.) is the section 901(m) payor. Paragraph (d) of this section provides rules for allocating cost recovery amounts and disposition amounts when the RFA owner (U.S.) is a fiscally transparent entity for U.S. income tax purposes. Paragraph (e) of this section provides special rules for allocating cost recovery amounts and disposition amounts with respect to certain section 743(b) CAAs. Paragraph (f) of this section provides special rules for allocating certain disposition amounts when a foreign payor is transferred in a mid-year transaction. Paragraph (g) of this section provides special rules for allocating both cost recovery amounts and disposition amounts in certain cases in which the RFA owner (U.S.) either is a reverse hybrid or a fiscally transparent entity for both U.S. and foreign income tax purposes that is directly or indirectly owned by a reverse hybrid. Paragraph (h) of this section provides examples illustrating the application of this section. Paragraph (i) of this section provides the applicability dates.

(b) *Basis difference taken into account under applicable cost recovery method*—(1) *In general.* When the RFA owner (U.S.) is a section 901(m) payor, all of a cost recovery amount is attributed to the section 901(m) payor and assigned to the U.S. taxable year of the section 901(m) payor in which the corresponding U.S. basis deduction is taken into account under the applicable cost recovery method. This is the case regardless of whether the deduction is deferred or disallowed for U.S. income tax purposes. If instead the RFA owner (U.S.) is a fiscally transparent entity for U.S. income tax purposes, a cost recovery amount is allocated to one or more section 901(m) payors under paragraph (d) of this section, except as provided in paragraphs (e) and (g) of this section. If a cost recovery amount arises from an RFA with respect to a section 743(b) CAA, in certain cases the cost recovery amount is allocated to a section 901(m) payor under paragraph (e) of this section. In certain cases in which the RFA owner (U.S.) either is a reverse hybrid or a fiscally transparent entity for both U.S. and foreign income tax purposes that is directly or indirectly owned by a reverse hybrid, a cost recovery amount is allocated to one or more section 901(m) payors under paragraph (g) of this section.

(2) *Determining a cost recovery amount*—(i) *General rule.* A cost recovery amount for an RFA is determined by applying the applicable cost recovery method to the basis difference rather than to the U.S. basis.

(ii) *U.S. basis subject to multiple cost recovery methods.* If the entire U.S. basis is not subject to the same cost recovery method, the applicable cost recovery method for determining the cost recovery amount is the cost recovery method that applies to the portion of the U.S. basis that corresponds to the basis difference.

(3) *Applicable cost recovery method.* For purposes of section 901(m), an applicable cost recovery method includes any method for recovering the cost of property over time for U.S. income tax purposes (each application of a method giving rise to a *U.S. basis deduction*). Such methods include depreciation, amortization, or depletion, as well as a method that allows the cost (or a portion of the cost) of property to be expensed in the year of acquisition or in the placed-in-service year, such as under section 179. Applicable cost recovery methods do not include any provision allowing the U.S. basis to be recovered upon a disposition of an RFA.

(c) *Basis difference taken into account as a result of a disposition*—(1) *In general.* Except as provided in paragraph (f) of this section, when the RFA owner (U.S.) is a section 901(m) payor, all of a disposition amount is attributed to the section 901(m) payor and assigned to the U.S. taxable year of the section 901(m) payor in which the disposition occurs. If instead the RFA owner (U.S.) is a fiscally transparent entity for U.S. income tax purposes, except as provided in paragraphs (e), (f), and (g) of this section, a disposition amount is allocated to one or more section 901(m) payors under paragraph (d) of this section. If a disposition amount arises from an RFA with respect to a section 743(b) CAA, in certain cases the disposition amount is allocated to a section 901(m) payor under paragraph (e) of this section. If there is a disposition of an RFA in a foreign taxable year of a foreign payor during which there is a mid-year transaction, in certain cases a disposition amount is allocated under paragraph (f) of this section. In certain cases in which the RFA owner (U.S.) either is a reverse hybrid or a fiscally transparent entity for both U.S. and foreign income tax purposes that is directly or indirectly owned by a reverse hybrid, a disposition amount is allocated to one or more section 901(m) payors under paragraph (g) of this section.

(2) *Determining a disposition amount*—(i) *Disposition is fully taxable for purposes of both U.S. income tax and the foreign income tax.* If a disposition of an RFA is fully taxable (that is, results in all gain or loss, if any, being recognized with respect to the RFA) for purposes of both U.S. income tax and the foreign income tax, the disposition amount is equal to the unallocated basis difference with respect to the RFA.

(ii) *Disposition is not fully taxable for purposes of U.S. income tax or the foreign income tax (or both).* If the disposition of an RFA is not fully taxable for purposes of both U.S. income tax and the foreign income tax, the disposition amount is determined under

this paragraph (c)(2)(ii). See § 1.901(m)–6 for rules regarding the continued application of section 901(m) if the RFA has any unallocated basis difference after determining the disposition amount under paragraph (c)(2)(ii)(A) or (B) of this section, as applicable.

(A) *Positive basis difference.* If the disposition of an RFA is not fully taxable for purposes of both U.S. income tax and the foreign income tax, and the RFA has a positive basis difference, the disposition amount equals the lesser of:

(*1*) Any foreign disposition gain plus any U.S. disposition loss (for this purpose, expressed as a positive amount), or

(*2*) Unallocated basis difference with respect to the RFA.

(B) *Negative basis difference.* If the disposition of an RFA is not fully taxable for purposes of both U.S. income tax and the foreign income tax, and the RFA has a negative basis difference, the disposition amount equals the greater of:

(*1*) Any U.S. disposition gain (for this purpose, expressed as a negative amount) plus any foreign disposition loss, or

(*2*) Unallocated basis difference with respect to the RFA.

(iii) *Disposition of an RFA after a section 743(b) CAA.* If an RFA was subject to a section 743(b) CAA and subsequently there is a disposition of the RFA, then, for purposes of determining the disposition amount, foreign disposition gain or foreign disposition loss are specially defined to mean the amount of gain or loss recognized for purposes of the foreign income tax on the disposition of the RFA that is allocable to the partnership interest that was transferred in the section 743(b) CAA. In addition, U.S. disposition gain or U.S. disposition loss are specially defined to mean the amount of gain or loss recognized for U.S. income tax purposes on the disposition of the RFA that is allocable to the partnership interest that was transferred in the section 743(b) CAA, taking into account the basis adjustment under section 743(b) that was allocated to the RFA under section 755.

(d) *General rules for allocating and assigning a cost recovery amount or a disposition amount when the RFA owner (U.S.) is a fiscally transparent entity*—(1) *In general.* Except as provided in paragraphs (e), (f), and (g) of this section, this paragraph (d) provides rules for allocating a cost recovery amount or a disposition amount when the RFA owner (U.S.) is a fiscally transparent entity for U.S. income tax purposes in which a section 901(m) payor directly or indirectly owns an interest, as well as for assigning the allocated amount to a U.S. taxable year of the section 901(m) payor. For purposes of this paragraph (d), unless otherwise indicated, a reference to direct or indirect ownership in an entity means for U.S. income tax purposes. For purposes of this paragraph (d), a person indirectly owns an interest in an entity for U.S. income tax purposes if the person owns the interest through one or more fiscally transparent entities for U.S. income tax purposes, and at least one of the fiscally transparent entities is not a disregarded entity. For purposes of this paragraph (d), a person indirectly owns an interest in an entity for foreign income tax purposes if the person owns the interest through one or more fiscally transparent entities for foreign income tax purposes. If the RFA owner (U.S.) is a lower-tier fiscally transparent entity for U.S. income tax purposes in which the section 901(m) payor indirectly owns an interest, the rules of this section apply in a manner consistent with the application of these rules when the section 901(m) payor directly owns an interest in the RFA owner (U.S.).

(2) *Allocation of a cost recovery amount.* A cost recovery amount is allocated to a section 901(m) payor that directly or indirectly owns an interest in the RFA owner (U.S.) to the extent the U.S. basis deduction that corresponds to the cost recovery amount is (or will be) included in the section 901(m) payor's distributive share of the income of the RFA owner (U.S.) for U.S. income tax purposes.

(3) *Allocation of a disposition amount attributable to foreign disposition gain or foreign disposition loss*—(i) *In general.* Except as provided in paragraph (f) of this section, a disposition amount attributable to foreign disposition gain or foreign disposition loss (as determined under paragraph (d)(5) of this section) is allocated under paragraph (d)(3)(ii) or (d)(3)(iii) of this section to a section 901(m) payor that directly or indirectly owns an interest in the RFA owner (U.S.).

(ii) *First allocation rule.* This paragraph (d)(3)(ii) applies when a section 901(m) payor, or a disregarded entity directly owned by a section 901(m) payor, is the foreign payor whose foreign income includes a distributive share of the foreign income of the RFA owner (foreign) and, therefore, all of the foreign income tax amount of the foreign payor is paid or accrued by, or considered paid by, the section 901(m) payor. Thus, this paragraph (d)(3)(ii) applies when the RFA owner (U.S.) is a fiscally transparent entity for both U.S. and foreign income tax purposes and a section 901(m) payor either directly owns an interest in the RFA owner (U.S.) or directly owns an interest in another fiscally transparent entity for U.S. and foreign income tax purposes, which, in turn, directly or indirectly owns an interest in the RFA owner (U.S.) for both U.S. and foreign income tax purposes. In these cases, the section 901(m) payor is allocated the portion of a disposition amount that is equal to the product of the disposition amount attributable to foreign disposition gain or foreign disposition loss, as applicable, and a fraction, the numerator of which is the portion of the foreign disposition gain or foreign disposition loss recognized by the RFA owner (foreign) for foreign income tax purposes that is (or will be) included in the foreign payor's distributive share of the foreign income of the RFA owner (foreign), and the denominator of which is the foreign disposition gain or foreign disposition loss.

(iii) *Second allocation rule.* This paragraph (d)(3)(iii) applies when neither a section 901(m) payor nor a disregarded entity directly owned by a section 901(m) payor is the foreign payor with respect to the foreign income of the RFA owner (foreign). Instead, a section 901(m) payor directly or indirectly owns an interest in the foreign payor, which is a fiscally transparent entity for U.S. income tax purposes (other than a disregarded entity directly owned by the section 901(m) payor), and, therefore, the section 901(m) payor is considered to pay or accrue only its allocated portion of the foreign income tax amount of the foreign payor. This will be the case when the foreign payor is either the RFA owner (U.S.), another fiscally transparent entity for U.S. income tax purposes (other than a disregarded entity directly owned by a section 901(m) payor) that directly or indirectly owns an interest in the RFA owner (U.S.) for both U.S. and foreign income tax purposes, or a disregarded entity directly owned by the RFA owner (U.S.). In these cases, the section 901(m) payor is allocated the portion of a disposition amount that is equal to the product of the disposition amount attributable to foreign disposition gain or foreign disposition loss, as applicable, and a fraction, the numerator of which is the portion of the foreign disposition gain or foreign disposition loss that is included in the allocable foreign income of the section 901(m) payor, and the denominator of which is the foreign disposition gain or foreign disposition loss. If allocable

foreign income is not otherwise required to be determined because there is no foreign income tax amount, the numerator is the portion of the foreign disposition gain or foreign disposition loss that would be included in the allocable foreign income of the section 901(m) payor if there were a foreign income tax amount.

(4) *Allocation of a disposition amount attributable to U.S. disposition gain or U.S. disposition loss.* A section 901(m) payor that directly or indirectly owns an interest in the RFA owner (U.S.) is allocated the portion of a disposition amount that is equal to the product of the disposition amount attributable to U.S. disposition gain or U.S. disposition loss (as determined under paragraph (d)(5) of this section), as applicable, and a fraction, the numerator of which is the portion of the U.S. disposition gain or U.S. disposition loss that is (or will be) included in the section 901(m) payor's distributive share of income of the RFA owner (U.S.) for U.S. income tax purposes, and the denominator of which is the U.S. disposition gain or U.S. disposition loss.

(5) *Determining the extent to which a disposition amount is attributable to foreign or U.S. disposition gain or loss*—(i) *RFA with a positive basis difference.* When there is a disposition of an RFA with a positive basis difference and the disposition results in either a foreign disposition gain or a U.S. disposition loss, but not both, the entire disposition amount is attributable to foreign disposition gain or U.S. disposition loss, as applicable, even if the disposition amount exceeds the foreign disposition gain or the absolute value of the U.S. disposition loss. If the disposition results in both a foreign disposition gain and a U.S. disposition loss, the disposition amount is attributable first to foreign disposition gain to the extent thereof, and the excess disposition amount, if any, is attributable to the U.S. disposition loss, even if the excess disposition amount exceeds the absolute value of the U.S. disposition loss.

(ii) *RFA with a negative basis difference.* When there is a disposition of an RFA with a negative basis difference and the disposition results in either a foreign disposition loss or a U.S. disposition gain, but not both, the entire disposition amount is attributable to foreign disposition loss or U.S. disposition gain, as applicable, even if the absolute value of the disposition amount exceeds the absolute value of the foreign disposition loss or the U.S. disposition gain. If the disposition results in both a foreign disposition loss and a U.S. disposition gain, the disposition amount is attributable first to foreign disposition loss to the extent thereof, and the excess disposition amount, if any, is attributable to the U.S. disposition gain, even if the absolute value of the excess disposition amount exceeds the U.S. disposition gain.

(6) *U.S. taxable year of a section 901(m) payor to which an allocated cost recovery amount or disposition amount is assigned.* A cost recovery amount or a disposition amount allocated to a section 901(m) payor under paragraph (d) of this section is assigned to the U.S. taxable year of the section 901(m) payor that includes the last day of the U.S. taxable year of the RFA owner (U.S.) in which, in the case of a cost recovery amount, the RFA owner (U.S.) takes into account the corresponding U.S. basis deduction (without regard to whether the deduction is deferred or disallowed for U.S. income tax purposes), or in the case of a disposition amount, the disposition occurs.

(e) *Special rules for certain section 743(b) CAAs.* If a section 901(m) payor acquires a partnership interest in a section 743(b) CAA, including a section 743(b) CAA with respect to a lower-tier partnership that results from a direct acquisition by the section 901(m) payor of an interest in an upper-tier partnership, and subsequently there is a cost recovery amount or a disposition amount that arises from an RFA with respect to that section 743(b) CAA, all of the cost recovery amount or the disposition amount is allocated to that section 901(m) payor. The U.S. taxable year of the section 901(m) payor to which the cost recovery amount or the disposition amount is assigned is the U.S. taxable year in which, in the case of a cost recovery amount, the section 901(m) payor takes into account the corresponding U.S. basis deduction (without regard to whether the deduction is deferred or disallowed for U.S. income tax purposes), or in the case of a disposition amount, the disposition occurs.

(f) *Mid-year transactions*—(1) *In general.* When a disposition of an RFA occurs in the same foreign taxable year that a foreign payor is involved in a mid-year transaction, the portion of the disposition amount that is attributable to foreign disposition gain or foreign disposition loss (as determined under paragraph (d)(5) of this section) is allocated to a section 901(m) payor and assigned to a U.S. taxable year of the section 901(m) payor under this paragraph (f). To the extent the disposition amount is attributable to U.S. disposition gain or U.S. disposition loss (as determined under paragraph (d)(5) of this section), see paragraph (c)(1) or (d) of this section, as applicable.

(2) *Allocation rule.* To the extent a disposition amount is attributable to foreign disposition gain or foreign disposition loss, a section 901(m) payor is allocated the portion of the disposition amount equal to the product of the disposition amount attributable to foreign disposition gain or foreign disposition loss, as applicable, and a fraction, the numerator of which is the portion of the foreign disposition gain or foreign disposition loss that is included in the allocable foreign income of the section 901(m) payor, and the denominator of which is the foreign disposition gain or foreign disposition loss. If allocable foreign income is not otherwise required to be determined because there is no foreign income tax amount, the numerator is the portion of the foreign disposition gain or foreign disposition loss that would be included in the allocable foreign income of the section 901(m) payor if there were a foreign income tax amount.

(3) *Assignment to a U.S. taxable year of a section 901(m) payor.* A disposition amount allocated to a section 901(m) payor under paragraph (f)(2) of this section is assigned to the U.S. taxable year of the section 901(m) payor in which the foreign disposition gain or foreign disposition loss (or portion thereof) is included in allocable foreign income of the section 901(m) payor or, if allocable foreign income is not otherwise required to be determined because there is no foreign income tax amount, the U.S. taxable year in which the foreign disposition gain or foreign disposition loss would be included in allocable foreign income if there were a foreign income tax amount.

(g) *Reverse hybrids*—(1) *In general.* This paragraph (g) provides rules for allocating a cost recovery amount or a disposition amount when the RFA owner (U.S.) is either a reverse hybrid or a fiscally transparent entity for U.S. and foreign income tax purposes that is directly or indirectly owned by a reverse hybrid for U.S. and foreign income tax purposes, and in each case, the foreign payor whose foreign income includes a distributive share of the foreign income of the RFA owner (foreign) directly or indirectly owns an interest in the reverse hybrid for foreign income tax purposes. Application of the allocation rules under paragraphs (g)(2) and (g)(3) of this section depend upon whether a section 901(m) payor or a disregarded entity directly owned by a section 901(m) payor is the foreign payor, or, instead, a section 901(m) payor directly or indirectly owns an interest in the foreign payor. For purposes of this

paragraph (g), unless otherwise indicated, a reference to direct or indirect ownership in an entity means for U.S. income tax purposes. For purposes of this paragraph (g), a person indirectly owns an interest in an entity for U.S. income tax purposes if the person owns the interest through one or more fiscally transparent entities for U.S. income tax purposes, and at least one of the fiscally transparent entities is not a disregarded entity. For purposes of this paragraph (g), a person indirectly owns an interest in an entity for foreign income tax purposes if the person owns the interest through one or more fiscally transparent entities for foreign income tax purposes. If the RFA owner (U.S.) is a lower-tier fiscally transparent entity for U.S. income tax purposes in which the reverse hybrid indirectly owns an interest, the rules of this section apply in a manner consistent with the application of these rules when the reverse hybrid directly owns an interest in the RFA owner (U.S.).

(2) *First allocation rule*—(i) *Allocation to a section 901(m) payor.* This paragraph (g)(2)(i) applies when a section 901(m) payor, or a disregarded entity directly owned by a section 901(m) payor, is the foreign payor whose foreign income includes a distributive share of the foreign income of the RFA owner (foreign), and, therefore, all of the foreign income tax amount of the foreign payor is paid or accrued by, or considered paid or accrued by, the section 901(m) payor. Thus, this paragraph (g)(2)(i) applies when a section 901(m) payor either directly owns an interest in the reverse hybrid or directly owns an interest in a fiscally transparent entity for U.S. and foreign income tax purposes, which, in turn, directly or indirectly owns an interest in the reverse hybrid for both U.S. and foreign income tax purposes. In these cases, the section 901(m) payor is allocated the portions of cost recovery amounts or disposition amounts (or both) with respect to RFAs that are equal to the product of the sum of the cost recovery amounts and the disposition amounts and a fraction, the numerator of which is the portion of the foreign income of the RFA owner (foreign) that is included in the foreign income of the foreign payor, and the denominator of which is the foreign income of the RFA owner (foreign).

(ii) *Assignment to a U.S. taxable year of a section 901(m) payor.* This paragraph (g)(2)(ii) applies when a cost recovery amount or a disposition amount, or portion thereof, is allocated to a section 901(m) payor under paragraph (g)(2)(i) of this section. If the reverse hybrid is the RFA owner (U.S.), a cost recovery amount or disposition amount, or portion thereof, is assigned to the U.S. taxable year of the section 901(m) payor that includes the last day of the U.S. taxable year of the reverse hybrid in which, in the case of a cost recovery amount, the reverse hybrid takes into account the corresponding U.S. basis deduction (without regard to whether the deduction is deferred or disallowed for U.S. income tax purposes), or, in the case of a disposition amount, the disposition occurs. If the reverse hybrid is not the RFA owner (U.S.) but instead the reverse hybrid directly or indirectly owns an interest in the RFA owner (U.S.) for both U.S. and foreign income tax purposes, a cost recovery amount or disposition amount, or portion thereof, is assigned to the U.S. taxable year of the section 901(m) payor that includes the last day of the U.S. taxable year of the reverse hybrid, which, in turn, includes the last day of the U.S. taxable year of the RFA owner (U.S.) in which, in the case of a cost recovery amount, the RFA owner (U.S.) takes into account the corresponding U.S. basis deduction (without regard to whether the deduction is deferred or disallowed for U.S. income tax purposes), or, in the case of a disposition amount, the disposition occurs.

(3) *Second allocation rule*—(i) *Allocation to a section 901(m) payor.* This paragraph (g)(3)(i) applies when neither a section 901(m) payor nor a disregarded entity directly owned by a section 901(m) payor is the foreign payor with respect to the foreign income of the RFA owner (foreign). Instead, a section 901(m) payor directly or indirectly owns an interest in the foreign payor, which is a fiscally transparent entity for U.S. income tax purposes (other than a disregarded entity directly owned by the section 901(m) payor), and, therefore, the section 901(m) payor is considered to pay or accrue only its allocated portion of the foreign income tax amount of the foreign payor. In these cases, the section 901(m) payor is allocated the portions of cost recovery amounts or disposition amounts (or both) with respect to RFAs that are equal to the product of the sum of the cost recovery amounts and the disposition amounts and a fraction, the numerator of which is the portion of the foreign income of the RFA owner (foreign) that is included in the foreign income of the foreign payor and included in the allocable foreign income of the section 901(m) payor, and the denominator of which is the foreign income of the RFA owner (foreign). If allocable foreign income is not otherwise required to be determined for a section 901(m) payor because there is no foreign income tax amount, the numerator is the foreign income of the RFA owner (foreign) that is included in the foreign income of the foreign payor and that would be included in allocable foreign income of the section 901(m) payor if there were a foreign income tax amount.

(ii) *Assignment to a U.S. taxable year of a section 901(m) payor.* A cost recovery amount or a disposition amount, or portion thereof, that is allocated to a section 901(m) payor under paragraph (g)(3)(i) of this section is assigned to the U.S. taxable year of the section 901(m) payor in which the foreign income of the RFA owner (foreign) described in paragraph (g)(3)(i) of this section is included in the allocable foreign income of the section 901(m) payor, or, if there is no foreign income tax amount, the U.S. taxable year of the section 901(m) payor in which the foreign income of the RFA owner (foreign) described in paragraph (g)(3)(i) of this section would be included in allocable foreign income if there were a foreign income tax amount.

(h) *Examples.* The following examples illustrate the rules of this section. In addition to any facts described in a particular example, the following facts apply to all the examples unless otherwise specified: CFC1, CFC2, and DE are organized in Country F and treated as corporations for Country F tax purposes. CFC1 and CFC2 are each an applicable foreign corporation that is wholly owned by the same U.S. corporation, and DE is a disregarded entity. CFC1 and CFC2 each have a U.S. taxable year that is a calendar year, and CFC1, CFC2, and DE each have a foreign taxable year that is a calendar year. Country F imposes a single tax that is a foreign income tax. CFC1, CFC2, and DE each have a functional currency of the u with respect to all activities. At all relevant times, 1u equals $1. All amounts are stated in millions. The examples assume that the applicable cost recovery method for property results in basis being recovered ratably over the life of the property beginning on the first day of the U.S. taxable year in which the property is acquired or placed into service.

(1) *Example 1: CAA followed by disposition: Fully taxable for both U.S. income tax and foreign income tax purposes*—(i) *Facts.* (A) On January 1, Year 1, USP acquires all of the stock of CFC1 in a qualified stock purchase (as defined in section 338(d)(3)) to which section 338(a) applies (Section 338 Acquisition). At the time of the Section 338 Acquisition, CFC1 owns a single asset (Asset A) that is located

in Country F. Asset A gives rise to income that is taken into account for Country F tax purposes. Asset A is tangible personal property that, under the applicable cost recovery method in the hands of CFC1, is depreciable over 5 years. There are no cost recovery deductions available for Country F tax purposes with respect to Asset A. Immediately before the Section 338 Acquisition, Asset A has a U.S. basis of 10u and a foreign basis of 40u. Immediately after the Section 338 Acquisition, Asset A has a U.S. basis of 100u and foreign basis of 40u.

(B) On July 1, Year 2, Asset A is transferred to an unrelated thirdparty in exchange for 120u in a transaction in which all realized gainis recognized for both U.S. income tax and Country F tax purposes(subsequent transaction). For U.S. income tax purposes, CFC1recognizes U.S. disposition gain of 50u (amount realized of 120u, lessU.S. basis of 70u (100u cost basis, less 30u of accumulateddepreciation)) with respect to Asset A. The 30u of accumulateddepreciation is the sum of 20u of depreciation in Year 1 (100u costbasis/5 years) and 10u of depreciation in Year 2 ((100u cost basis/5years) × 6/12). For Country F tax purposes, CFC1 recognizes foreigndisposition gain of 80u (amount realized of 120u, less foreign basisof 40u) with respect to Asset A. Immediately after the subsequenttransaction, Asset A has a U.S. basis and a foreign basis of 120u.

(ii) *Result.* (A) Under § 1.901(m)–2(b)(1), USP's acquisition of the stock of CFC1 in the Section 338 Acquisition is a section 338 CAA. Under § 1.901(m)–2(c)(i), Asset A is an RFA with respect to Country F tax because it is relevant in determining the foreign income of CFC1 for Country F tax purposes. Under § 1.901(m)–4(b), the basis difference with respect to Asset A is 90u (100u − 10u). Under § 1.901(m)–1(a)(37), CFC1 is the RFA owner (U.S.) with respect to Asset A. Under § 1.901(m)–1(a)(28), CFC1 is a foreign payor for Country F tax purposes. Under § 1.901(m)–1(a)(41), CFC1 is the section 901(m) payor with respect to a foreign income tax amount for which CFC1 is the foreign payor (see § 1.901–2(f)(1)).

(B) Under § 1.901(m)–1(a)(5), allocated basis differences are the sum of cost recovery amounts and disposition amounts. In Year 1, Asset A has an allocated basis difference that includes only a cost recovery amount. Under paragraph (b)(2) of this section, the cost recovery amount for Year 1 is determined by applying the applicable cost recovery method of Asset A in the hands of CFC1 to the basis difference with respect to Asset A. Accordingly, the cost recovery amount is 18u (90u basis difference/5 years). Under paragraph (b)(1) of this section, all of the 18u cost recovery amount is attributed to CFC1 and assigned to Year 1, because CFC1 is a section 901(m) payor and RFA owner (U.S.) with respect to Asset A and Year 1 is the U.S. taxable year of CFC1 in which it takes into account the corresponding 20u of depreciation. Immediately after Year 1, under § 1.901(m)–1(a)(47), unallocated basis difference is 72u with respect to Asset A (90u − 18u).

(C) In Year 2, Asset A has an allocated basis difference that includes both a cost recovery amount and a disposition amount. Under paragraph (b)(2) of this section, the cost recovery amount for Year 2, as of the date of the subsequent transaction, is 9u ((90u basis difference/5 years) × 6/12). Under § 1.901(m)–1(a)(15), the subsequent transaction is a disposition of Asset A, because the subsequent transaction is an event that results in an amount of gain being recognized for U.S. income tax and Country F tax purposes. Because all realized gain in Asset A is recognized for U.S. income tax and Country F tax purposes, the rule in paragraph (c)(2)(i) of this section applies to determine the disposition amount. Under that rule, the disposition amount for Year 2 is the unallocated basis difference of 63u (90u basis difference, less total 27u taken into account as cost recovery amounts in Year 1 and Year 2). Accordingly, the allocated basis difference for Year 2 is 72u (9u of cost recovery amount, plus 63u of disposition amount). Under paragraphs (b)(1) and (c)(1) of this section, all of the 72u of allocated basis difference is attributed to CFC1 and assigned to Year 2, because CFC1 is a section 901(m) payor and the RFA owner (U.S.) with respect to Asset A and Year 2 is the U.S. taxable year of CFC1 in which it takes into account the corresponding 10u of depreciation and in which the disposition occurred.

(D) Unallocated basis difference with respect to Asset A, as determined immediately after the subsequent transaction, is 0u (90u basis difference less 90u basis difference taken into account as 27u total cost recovery amount in Year 1 and Year 2 and as a 63u disposition amount in Year 2). Accordingly, because there is no unallocated basis difference with respect to Asset A attributable to the Section 338 Acquisition, the subsequent transaction is not a successor transaction as defined in § 1.901(m)–6(b)(2). Furthermore, the subsequent transaction is not a CAA under § 1.901(m)–2(b). For these reasons, section 901(m) no longer applies to Asset A.

(2) *Example 2: CAA followed by disposition: nontaxable for U.S. income tax purposes and taxable for foreign income tax purposes*—(i) *Facts.* The facts are the same as in paragraph (h)(1)(i)(A) of this section (paragraph (i)(A) of *Example 1*) but the facts in paragraph (h)(1)(i)(B) of this section (paragraph (i)(B) of *Example 1*) are instead that on July 1, Year 2, Asset A is transferred to CFC2, in exchange for 100u of stock of CFC2 (subsequent transaction). For U.S. income tax purposes, CFC1 does not recognize any U.S. disposition gain or U.S. disposition loss with respect to Asset A. For Country F tax purposes, CFC1 recognizes foreign disposition gain of 60u (amount realized of 100u, less foreign basis of 40u) with respect to Asset A. Immediately after the subsequent transaction, Asset A has a U.S. basis of 70u (100u cost basis less 30u accumulated depreciation) and a foreign basis of 100u. The 30u of accumulated depreciation is the sum of 20u of depreciation in Year 1 (100u cost basis/5 years) and 10u in Year 2 ((100u cost basis/5 years) × 6/12).

(ii) *Result.* (A) The results described in paragraph (h)(1)(ii)(A) of this section (paragraph (ii)(A) of *Example 1)* also apply to this paragraph (h)(2)(ii) (the results of this *Example 2*).

(B) The result for Year 1 is the same as in paragraph (h)(1)(ii)(B) of this section (paragraph (ii)(B) of *Example 1*).

(C) In Year 2, Asset A has an allocated basis difference that includes both a cost recovery amount and a disposition amount. Under paragraph (b)(2) of this section, the cost recovery amount for Year 2, as of the date of the subsequent transaction, is 9u ((90u basis difference/5 years) × 6/12). Under § 1.901(m)–1(a)(15), the subsequent transaction is a disposition of Asset A, because the subsequent transaction is an event that results in an amount of gain being recognized for Country F tax purposes. Because the disposition is not also fully taxable for U.S. income tax purposes, the rule in paragraph (c)(2)(ii) of this section applies to determine the disposition amount. Under that rule, the disposition amount is 60u, the lesser of (i) 60u (60u foreign disposition gain plus absolute value of 0u U.S. disposition loss), and (ii) 63u unallocated basis difference (90 basis difference less total 27u taken into account as cost recovery amounts, 18u in Year 1 and 9u in Year 2). Accordingly, the allocated basis difference for the first half of Year 2 is 69u (9u of cost recovery amount, plus 60u of disposition amount). Under paragraphs (b)(1) and (c)(1) of this section, all of the 69u of allocated basis difference is attributed to CFC1 and assigned to Year 2, because CFC1 is a section 901(m) payor and the RFA owner (U.S.) with respect to Asset A and Year 2 is the U.S. taxable year of CFC1 in which it takes into account the corresponding 10u of depreciation and in which the disposition occurred.

(D) Unallocated basis difference with respect to Asset A immediately after the subsequent transaction is 3u (90u basis difference less 87u basis difference taken into account as a 27u total cost recovery amount in Year 1 and Year 2 and as a 60u disposition amount in Year 2). Accordingly, because there is unallocated basis difference of 3u with respect to Asset A attributable to the Section 338 Acquisition, as determined immediately after the subsequent transaction, the subsequent transaction is a successor transaction as defined in § 1.901(m)–6(b)(2). Following the subsequent transaction, the unallocated basis difference of 3u must be taken into account as cost recovery amounts or disposition amounts (or both) by CFC2, the new section 901(m) payor and RFA owner (U.S.) of Asset A. See § 1.901(m)–6(b)(3)(ii). Because the subsequent transaction is not a CAA under § 1.901(m)–2(b), there is no additional basis difference with respect to Asset A as a result of the subsequent transaction.

(3) Example 3: CAA followed by disposition: nontaxable for both U.S. income tax and foreign income tax purposes—(i) *Facts.* The facts are the same as in paragraph (h)(1)(i)(A) of this section (paragraph (i)(A) of *Example 1*) but the facts in paragraph (h)(1)(i)(B) of this section (paragraph (i)(B) of *Example 1*) are instead that on July 1, Year 2, CFC1 transfers Asset A to CFC2, in exchange for 110u of stock of CFC2 (subsequent transaction). For U.S. income tax purposes, CFC1 does not recognize any U.S.

disposition gain or U.S. disposition loss with respect to Asset A as a result of the subsequent transaction. Furthermore, for Country F tax purposes, CFC1 recognizes no foreign disposition gain or foreign disposition loss with respect to Asset A as a result of the subsequent transaction. Immediately after the subsequent transaction, Asset A has a U.S. basis of 70u (100u cost basis less 30u accumulated depreciation) and a foreign basis of 40u. The 30u of accumulated depreciation is the sum of 20u of depreciation in Year 1 (100u cost basis/5 years) and 10u in Year 2 ((100u cost basis/5 years) × 6/12).

(ii) *Result.* (A) The result for Year 1 is the same as in paragraph (h)(1)(ii)(A) of this section (paragraph (ii)(A) of *Example 1*).

(B) The result for Year 1 is the same as in paragraph (h)(1)(ii)(B) of this section (paragraph (ii)(B) of *Example 1*).

(C) In Year 2, Asset A has an allocated basis difference that includes only a cost recovery amount. Under paragraph (b)(2) of this section, the cost recovery amount for Year 2, as of the date of the subsequent transaction, is 9u ((90u basis difference/5 years) x 6/12). Under § 1.901(m)–1(a)(15), the subsequent transaction does not constitute a disposition of Asset A, because the subsequent transaction is not an event that results in an amount of gain or loss being recognized for U.S. income tax or for Country F tax purposes. Therefore, no disposition amount is taken into account for Asset A in Year 2. Under paragraph (b)(1) of this section, all of the 9u of allocated basis difference is attributed to CFC1 and assigned to Year 2, because CFC1 is a section 901(m) payor and RFA owner (U.S.) with respect to Asset A and Year 2 is the U.S. taxable year of CFC1 in which it takes into account the corresponding 10u of depreciation.

(D) Unallocated basis difference with respect to Asset A immediately after the subsequent transaction is 63u (90u basis difference, less 27u total cost recovery amounts, 18u in Year 1 and 9u in Year 2). Accordingly, because there is unallocated basis difference of 63u with respect to Asset A attributable to the CAA, as determined immediately after the subsequent transaction, the subsequent transaction is a successor transaction as defined in § 1.901(m)–6(b)(2). Following the subsequent transaction, the unallocated basis difference of 63u must be taken into account as cost recovery amounts or disposition amounts (or both) by CFC2, the new section 901(m) payor and RFA owner (U.S.) of Asset A. See § 1.901(m)–6(b)(3)(ii). Because the subsequent transaction is not a CAA under § 1.901(m)–2(b), there is no additional basis difference with respect to Asset A as a result of the subsequent transaction.

(i) *Applicability dates.* (1) Except as provided in paragraph (i)(2) of this section, this section applies to CAAs occurring on or after March 23, 2020.

(2) Paragraphs (b)(2)(i) and (c)(2) of this section apply to CAAs occurring on or after July 21, 2014, and to CAAs occurring before that date resulting from an entity classification election made under § 301.7701–3 of this chapter that is filed on or after July 29, 2014, and that is effective on or before July 21, 2014. Paragraphs (b)(2)(i) and (c)(2) of this section also apply to CAAs occurring on or after January 1, 2011, and before July 21, 2014, other than CAAs occurring before July 21, 2014, resulting from an entity classification election made under § 301.7701–3 that is filed on or after July 29, 2014, and that is effective on or before July 21, 2014, but only with respect to basis difference determined under § 1.901(m)–4T(e) with respect to the CAA.

(3) Taxpayers may, however, choose to apply provisions in this section before the date such provisions are applicable pursuant to paragraphs (i)(1) and (2) of this section, provided that they (along with any persons that are related (within the meaning of section 267(b) or 707(b)) to the taxpayer)—

(i) Consistently apply this section, § 1.704–1(b)(4)(viii)(*c*)(*4*)(*v*) through (*vii*), § 1.901(m)–1, § 1.901(m)–3, § 1.901(m)–4 (excluding § 1.901(m)–4(e)), § 1.901(m)–6, § 1.901(m)–7, and § 1.901(m)–8 to all CAAs occurring on or after January 1, 2011, and consistently apply § 1.901(m)–2 (excluding § 1.901(m)–2(d)) to all CAAs occurring on or after December 7, 2016, on any original or amended tax return for each taxable year for which the application of the provisions listed in this paragraph (i)(3)(i) affects the tax liability and for which the statute of limitations does not preclude assessment or the filing of a claim for refund, as applicable;

(ii) File all tax returns described in paragraph (i)(3)(i) of this section for any taxable year ending on or before March 23, 2020, no later than March 23, 2021; and

(ii) Make appropriate adjustments to take into account deficiencies that would have resulted from the consistent application under paragraph (i)(3)(i) of this section for taxable years that are not open for assessment.

§ 1.901(m)–5T [Removed]

■ **Par. 12.** Section 1.901(m)–5T is removed.

■ **Par. 13.** Section 1.901(m)–6 is added to read as follows:

§ 1.901(m)–6 Successor rules.

(a) *In general.* This section provides successor rules applicable to section 901(m). Paragraph (b) of this section provides rules for the continued application of section 901(m) after an RFA that has unallocated basis difference has been transferred, including special rules applicable to successor transactions that are also CAAs or that involve partnerships. Paragraph (c) of this section provides rules for determining when an aggregate basis difference carryover of a section 901(m) payor either becomes an aggregate basis difference carryover of the section 901(m) payor with respect to another foreign payor or is transferred to another section 901(m) payor, and paragraph (d) of this section provides applicability dates.

(b) *Successor rules for unallocated basis difference*—(1) *In general.* Except as provided in paragraph (b)(4) of this section, section 901(m) continues to apply after a successor transaction to any unallocated basis difference attached to a transferred RFA until the entire basis difference has been taken into account as a cost recovery amount or a disposition amount (or both) under § 1.901(m)–5.

(2) *Definition of a successor transaction.* A successor transaction occurs with respect to an RFA if, after a CAA (*prior CAA*), there is a transfer of the RFA for U.S. income tax purposes and the RFA has unallocated basis difference with respect to the prior CAA, determined immediately after the transfer. A successor transaction may occur regardless of whether the transfer of the RFA is a disposition, a CAA, or a non-taxable transaction for purposes of U.S. income tax. If the RFA was subject to multiple prior CAAs, a separate determination must be made with respect to each prior CAA as to whether the transfer is a successor transaction.

(3) *Special considerations.* (i) If an asset is an RFA with respect to more than one foreign income tax, this paragraph (b) applies separately with respect to each foreign income tax.

(ii) Any subsequent cost recovery amount for an RFA transferred in a successor transaction is determined based on the post-transaction applicable cost recovery method, as described in § 1.901(m)–5(b)(3), that applies to the U.S. basis (or portion thereof) that corresponds to the unallocated basis difference.

(4) *Successor transaction is a CAA*—(i) *In general.* An asset may be an RFA with respect to multiple CAAs if a successor transaction is also a CAA (*subsequent CAA*). Except as otherwise provided in this paragraph (b)(4), if there is a subsequent CAA, unallocated basis difference with respect to any prior CAAs will continue to be taken into account under section 901(m) after the subsequent CAA. Furthermore, the subsequent CAA may give rise to additional basis difference subject to section 901(m).

(ii) *Foreign basis election.* If a foreign basis election is made under § 1.901(m)–4(c) with respect to a foreign income tax in a subsequent CAA, any unallocated basis difference with respect to one or more prior CAAs will not be taken into account under section 901(m). The only basis difference that will be taken into account after the subsequent CAA with respect to that foreign income tax is the basis difference with respect to the subsequent CAA.

(iii) *Multiple section 743(b) CAAs.* If an RFA is subject to two section 743(b) CAAs (*prior section 743(b) CAA* and *subsequent section 743(b) CAA*) and the same partnership interest is acquired in both the CAAs, the RFA will be treated as having no unallocated basis difference with respect to the prior section 743(b) CAA if the basis difference for the section 743(b) CAA is determined independently from the prior section 743(b) CAA. In this regard, see generally § 1.743–1(f). If the subsequent section 743(b) CAA results from the acquisition of only a portion of the partnership interest acquired in the prior section 743(b) CAA, then the transferor will be required to equitably apportion the unallocated basis difference attributable to the prior section 743(b) CAA between the portion retained by the transferor and the portion transferred. In this case, with respect to the portion transferred, the RFAs will be treated as having no unallocated basis difference with respect to the prior section 743(b) CAA if basis difference for the subsequent section 743(b) CAA is determined independently from the prior section 743(b) CAA.

(5) *Example.* The following example illustrates the rules of paragraph (b) of this section.

(i) *Facts.* USP, a domestic corporation, wholly owns CFC, a foreign corporation organized in Country A and treated as a corporation for both U.S. and Country A tax purposes. FT is an unrelated foreign corporation organized in Country A and treated as a corporation for both U.S. and Country A tax purposes. FT owns one asset, a parcel of land (Asset). Country A imposes a single tax that is a foreign income tax. On January 1, Year 1, CFC acquires all of the stock of FT in exchange for 300u in a qualified stock purchase (as defined in section 338(d)(3)) to which section 338(a) applies (Acquisition). Immediately before the Acquisition, Asset had a U.S. basis of 100u, and immediately after the Acquisition, Asset had a U.S. basis of 300u. Effective on February 1, Year 1, FT elects to be a disregarded entity pursuant to § 301.7701–3. As a result of the election, FT is deemed, for U.S. income tax purposes, to distribute Asset to CFC in liquidation (Deemed Liquidation) immediately before the closing of the day before the election is effective pursuant to § 301.7701–3(g)(1)(iii) and (3)(ii). The Deemed Liquidation is disregarded for Country A tax purposes. No gain or loss is recognized on the Deemed Liquidation for either U.S. or Country A tax purposes.

(ii) *Result.* Under § 1.901(m)–2(b)(1), the acquisition by CFC of the stock of FT is a section 338 CAA. Under § 1.901(m)–2(c)(1), Asset is an RFA with respect to Country A tax and the Acquisition, because immediately after the Acquisition, Asset is relevant in determining foreign income of FT for Country A tax purposes, and FT owned Asset when the Acquisition occurred. Under § 1.901(m)–4(b), the basis difference with respect to Asset is 200u (300u—100u). Under § 1.901(m)–2(b)(2), the Deemed Liquidation is a CAA (subsequent CAA) because the Deemed Liquidation is treated as an acquisition of assets for U.S. income tax purposes and is disregarded for Country A tax purposes. Because the U.S. basis in Asset is 300u immediately before and after the Deemed Liquidation, the subsequent CAA does not give rise to any additional basis difference. The Deemed Liquidation is not a disposition under § 1.901(m)–1(a)(15) because it did not result in gain or loss being recognized with respect to Asset for U.S. or Country A tax purposes. Accordingly, no basis difference with respect to Asset is taken into account under § 1.901(m)–5 as a result of the Deemed Liquidation, and the unallocated basis difference with respect to Asset immediately after the Deemed Liquidation is 200u (200u—0u). Under paragraph (b)(2) of this section, the Deemed Liquidation is a successor transaction because there is a transfer of Asset for U.S. income tax purposes from FT to CFC and Asset has unallocated basis difference with respect to the Acquisition immediately after the Deemed Liquidation. Accordingly, under paragraph (b)(1) of this section, section 901(m) will continue to apply to the unallocated basis difference with respect to Asset until the entire 200u basis difference has been taken into account under § 1.901(m)–5.

(c) *Successor rules for aggregate basis difference carryover*—(1) *Transfers of a section 901(m) payor's aggregate basis difference carryover to another person.* If a corporation acquires the assets of a section 901(m) payor in a transaction to which section 381 applies, that corporation succeeds to any aggregate basis difference carryovers of the section 901(m) payor.

(2) *Transfers of a section 901(m) payor's aggregate basis difference carryover with respect to a foreign payor to another foreign payor.* If a section 901(m) payor has an aggregate basis difference carryover, with respect to a foreign income tax and a foreign payor, and substantially all of the assets of the foreign payor are transferred to another foreign payor in which the section 901(m) payor owns an interest, the section 901(m) payor's aggregate basis difference carryover with respect to the first foreign payor is transferred to the section 901(m) payor's aggregate basis difference carryover with respect to the other foreign payor. In such a case, the section 901(m) payor's aggregate basis difference carryover with respect to the first foreign payor is reduced to zero.

(3) *Anti-abuse rule.* If a section 901(m) payor has an aggregate basis difference carryover with respect to a foreign income tax and a foreign payor and, with a principal purpose of avoiding the application of section 901(m), assets of the foreign payor are transferred to another foreign payor in a transaction not described in paragraph (c)(1) or (2) of this section, then a portion of the aggregate basis difference carryover of the section 901(m) payor is transferred either to the aggregate basis difference carryover of the section 901(m) payor with respect to the other foreign payor or to another section 901(m) payor, as appropriate. The portion of the aggregate basis difference carryover transferred is determined based on the ratio of fair market value of the assets transferred to the fair market value of all of the assets of the foreign payor that transferred the assets. Similar principles apply when, with a principal purpose of avoiding the application of section 901(m), there is a change in the allocation of foreign income for foreign income tax purposes or the allocation of foreign income tax amounts for U.S. income tax purposes that would otherwise separate foreign income tax amounts from the related aggregate basis difference carryover.

(4) *Ownership.* For purposes of this paragraph (c), a section 901(m) payor owns an interest in a foreign payor if the section 901(m) payor owns the interest directly or indirectly through one or more fiscally transparent entities for U.S. income tax purposes.

(d) *Applicability dates*—(1) Except as provided in paragraph (d)(2) of this section, this section applies to CAAs occurring on or after March 23, 2020.

(2) Paragraphs (a), (b)(1) and (2), (b)(4)(i) and (iii), and (b)(5) of this section apply to CAAs occurring on or after July 21, 2014, and to CAAs occurring before that date resulting from an entity classification election made under § 301.7701–3 of this chapter that is filed on or after July 29, 2014, and that is effective on or before July 21, 2014. Paragraphs (a), (b)(1) and (2), (b)(4)(i) and (iii), and (b)(5) of this section also apply to CAAs occurring on or after January 1, 2011, and before July 21, 2014, other than CAAs occurring before July 21, 2014, resulting from an entity classification election made under § 301.7701–3 that is filed on or after July 29, 2014, and that is effective on or before July 21, 2014, but only with

respect to basis difference determined under § 1.901(m)–4T(e) with respect to the CAA.

(3) Taxpayers may, however, choose to apply provisions in this section before the date such provisions are applicable pursuant to paragraphs (d)(1) and (2) of this section, provided that they (along with any persons that are related (within the meaning of section 267(b) or 707(b)) to the taxpayer)—

(i) Consistently apply this section, § 1.704–1(b)(4)(viii)(*c*)(*4*)(*v*) through (*vii*), § 1.901(m)–1, §§ 1.901(m)–3 through 1.901(m)–5 (excluding § 1.901(m)–4(e)), § 1.901(m)–7, and § 1.901(m)–8 to all CAAs occurring on or after January 1, 2011, and consistently apply § 1.901(m)–2 (excluding § 1.901(m)–2(d)) to all CAAs occurring on or after December 7, 2016, on any original or amended tax return for each taxable year for which the application of the provisions listed in this paragraph (d)(3)(i) affects the tax liability and for which the statute of limitations does not preclude assessment or the filing of a claim for refund, as applicable;

(ii) File all tax returns described in paragraph (d)(3)(i) of this section for any taxable year ending on or before March 23, 2020, no later than March 23, 2021; and

(iii) Make appropriate adjustments to take into account deficiencies that would have resulted from the consistent application under paragraph (d)(3)(i) of this section for taxable years that are not open for assessment.

§ 1.901(m)–6T [Removed]

■ **Par. 14.** Section 1.901(m)–6T is removed.

■ **Par. 15.** Section 1.901(m)–7 is added to read as follows:

§ 1.901(m)–7 De minimis rules.

(a) *In general.* This section provides rules describing basis difference that is not taken into account under section 901(m) because a CAA results in a de minimis amount of basis difference. Paragraph (b) of this section sets forth the general rule for determining whether the de minimis threshold is met. Paragraph (c) of this section modifies the general rule in the case of CAAs that are part of an aggregated CAA transaction. Paragraph (d) of this section provides rules for applying this section, and paragraph (e) of this section provides an anti-abuse rule applicable to related persons. Paragraph (f) of this section provides examples that illustrate the application of this section. Paragraph (g) of this section provides applicability dates.

(b) *General rule*—(1) *In general.* A basis difference with respect to an RFA and a foreign income tax is not taken into account under section 901(m) if the requirements under the cumulative basis difference exemption, the RFA class exemption, or the RFA exemption are satisfied.

(2) *Cumulative basis difference exemption.* Except as provided in paragraph (c) of this section, a basis difference, with respect to an RFA and a foreign income tax, is not taken into account under section 901(m) (*cumulative basis difference exemption*) if the sum of that basis difference and all other basis differences (including negative basis differences), with respect to a single CAA and a single RFA owner (U.S.), is less than the greater of:

(i) $10 million, or

(ii) 10 percent of the total U.S. basis of all the RFAs immediately after the CAA.

(3) *RFA class exemption*—(i) Except as provided in paragraph (c) of this section, a basis difference, with respect to an RFA and a foreign income tax, is not taken into account under section 901(m) (*RFA class exemption*) if the RFA is part of a class of RFAs and the absolute value of the sum of the basis differences (including negative basis differences), with respect to a single CAA and a single RFA owner, for all the RFAs in that class is less than the greater of:

(A) $2 million, or

(B) 10 percent of the total U.S. basis of all the RFAs in that class of RFAs immediately after the CAA.

(ii) For purposes of this paragraph (b)(3), the classes of RFAs are the seven asset classes defined in § 1.338–6(b), regardless of whether the CAA is a section 338 CAA.

(4) *RFA exemption.* A basis difference, with respect to an RFA and a foreign income tax, is not taken into account under section 901(m) (*RFA exemption*) if the absolute value of the basis difference with respect to the RFA is less than $20,000.

(c) *Special rule if a CAA is part of an aggregated CAA transaction.* If a CAA is part of an aggregated CAA transaction and a single RFA owner (U.S.) does not own all the RFAs attributable to the CAAs that are part of the aggregated CAA transaction, the cumulative basis difference exemption and the RFA class exemption apply to such CAA only if, in addition to satisfying the requirements of paragraph (b)(2) or (b)(3) of this section, respectively, determined without regard to this paragraph (c), the cumulative basis difference exemption or the RFA class exemption, as modified by this paragraph (c), is satisfied. Solely for purposes of this paragraph (c), the cumulative basis difference exemption and the RFA class exemption are applied taking into account all the basis differences with respect to all the RFAs owned by all the RFA owners (U.S.) that are attributable to the CAAs that are part of the aggregated CAA transaction.

(d) *Rules of application.* The following rules apply for purposes of this section.

(1) Whether a basis difference qualifies for the cumulative basis difference exemption, the RFA class exemption, or the RFA exemption is determined when an asset first becomes an RFA with respect to a CAA. In the case of a subsequent CAA described in § 1.901(m)–6(b)(4), the application of the cumulative basis difference exemption, the RFA class exemption, and the RFA exemption is based on basis difference, if any, that results from the subsequent CAA.

(2) If there is an aggregated CAA transaction, the cumulative basis difference exemption and each RFA class exemption are applied by treating all CAAs that are part of the aggregated CAA transaction as a single CAA.

(3) Basis difference is computed in accordance with § 1.901(m)–4 except that a foreign basis election need not be evidenced if the cumulative basis difference exemption, an RFA class exemption, or the RFA exemption apply to all RFAs with respect to the CAA.

(4) Basis difference is translated into U.S. dollars (if necessary) using the spot rate determined under the principles of § 1.988–1(d) on the date of the CAA.

(e) *Anti-abuse rule.* The cumulative basis difference exemption, an RFA class exemption, and the RFA exemption are not available if the transferor and transferee in the CAA are related persons (as described in section 267(b) or 707(b)) and the CAA was entered into, or structured, with a principal purpose of avoiding the application of section 901(m). See also § 1.901(m)–8(c), which provides that certain built-in loss assets are not taken into account for purposes of applying this section.

(f) *Examples.* The following examples illustrate the rules of this section:

(1) *Example 1: De minimis; cumulative basis difference exemption*—(i) *Facts.* USP, a domestic corporation, as part of a plan, purchases all of the stock of CFC1 and CFC2 from a single seller. CFC1 and CFC2 are applicable foreign corporations, organized in Country F, and treated as corporations for Country F tax purposes. Country F imposes a single tax that is a foreign income tax. Each acquisition is a qualified stock purchase (as defined in section 338(d)(3)) to which section

338(a) applies. A foreign basis election is not made under § 1.901(m)–4(c). Immediately after the acquisition of the stock of CFC1 and CFC2, the assets of CFC1 and CFC2 give rise to income that is taken into account for Country F tax purposes, and those assets are in a single class, as defined in § 1.338–6(b). Assume that the absolute value of the basis difference with respect to any single RFA is greater than $20,000. At all relevant times, 1u equals $1. All amounts are stated in millions. The additional facts are summarized below.

Relevant foreign assets	Total U.S. basis immediately before	Total U.S. basis immediately after	Total basis difference
Assets of CFC1	48u	60u	12u
Assets of CFC2	100u	96u	(4)u
Total	148u	156u	8u

(ii) *Result.* (A) Under § 1.901(m)–2(b)(1), USP's acquisitions of the stock of CFC1 and CFC2 are each a section 338 CAA. Under 1.901(m)–1(a)(3), the two section 338 CAAs constitute an aggregated CAA transaction because the acquisitions occur as part of a plan. Under § 1.901(m)–2(c)(1), the assets of CFC1 and CFC2 are RFAs for Country F tax purposes because they are relevant in determining foreign income of CFC1 and CFC 2, respectively, for Country F tax purposes. Under § 1.901(m)–1(a)(37), CFC1 is the RFA owner (U.S.) with respect to its assets, and CFC2 is the RFA owner (U.S.) with respect to its assets.

(B) Under paragraph (b)(2) of this section, the application of the cumulative basis difference exemption is based on a single CAA and a single RFA owner (U.S.), subject to the requirements under paragraph (c) of this section that apply when there is an aggregated CAA transaction. In the case of the section 338 CAA with respect to CFC1, without regard to paragraph (c) of this section, the requirements of the cumulative basis difference exemption are satisfied if the sum of the basis differences is less than the threshold of $10 million, the greater of $10 million or $6 million (10% of the total U.S. basis of $60 million (60 million u translated into dollars at the exchange rate of $1 = 1u)). In this case, the sum of the basis differences is $12 million (12 million u translated into dollars at the exchange rate of $1 = 1 u). Because the sum of the basis differences of $12 million is not less than the threshold of $10 million, the requirements of the cumulative basis difference exemption are not satisfied. Because the requirements of the cumulative basis difference exemption are not satisfied, without regard to paragraph (c) of this section, paragraph (c) of this section is not applicable. The RFA class exemption is not relevant because all of the RFAs of CFC1 are in a single class. Finally, because the absolute value with respect to each RFA is greater than $20,000, the RFA exemption does not apply. Accordingly, the basis differences with respect to all of the RFAs of CFC1 must be taken into account under section 901(m).

(C) In the case of the section 338 CAA with respect to CFC2, without regard to paragraph (c) of this section, the requirements of the cumulative basis difference exemption are satisfied if the sum of the basis differences is less than the threshold of $10 million, the greater of $10 million or $ 9.6 million (10% of the total U.S. basis of $96 million (96 million u translated into dollars at the exchange rate of $1 = 1u)) In this case, the sum of the basis differences is ($4) million ((4) million u translated into dollars at the exchange rate of $1 = 1 u). Because the sum of the basis differences of ($4) million is less than the threshold of $10 million, the requirements of the cumulative basis difference exemption are satisfied. However, because the section 338 CAA with respect to CFC2 is part of an aggregated CAA transaction that includes the section 338 CAA with respect to CFC1, paragraph (c) of this section is applicable. Under paragraph (c) of this section, the requirements of the cumulative basis difference exemption must also be satisfied taking into account all of the RFAs of both CFC2 and CFC1. In this case, the requirements of the cumulative basis difference exemption for purposes of paragraph (c) of this section are satisfied if the sum of the basis differences with respect to all of the RFAs of CFC2 and CFC1 is less than the threshold of $15.6 million, the greater of $10 million or $15.6 million (10% of the total U.S. basis of $156 million (156 million u translated into dollars at the exchange rate of $1 = 1u)). In this case, the sum of the basis differences is $8 million (8 million u translated into dollars at the exchange rate of $1 = 1 u). Because the sum of the basis differences of $8 million is less than the threshold of $15.6 million, the requirements of the cumulative basis difference exemption are satisfied in the case of the section 338 CAA with respect to CFC2. Accordingly, none of the basis differences with respect to the RFAs of CFC2 are taken into account under section 901(m).

(2) *Example 2: De minimis; RFA Class Exemption*—(i) *Facts.* USP, a domestic corporation, acquires all the stock of CFC, an applicable foreign corporation organized in Country F and treated as a corporation for Country F tax purposes, in a qualified stock purchase (as defined in section 338(d)(3)) to which section 338(a) applies. Country F imposes a single tax that is a foreign income tax. A foreign basis election is not made under § 1.901(m)–4(c). Immediately after the acquisition of CFC, the assets of CFC give rise to income that is taken into account for Country F tax purposes. Assume that the absolute value of the basis difference with respect to any single RFA is greater than $20,000. At all relevant times, 1u equals $1. All amounts are stated in millions. The additional facts are summarized below.

Relevant foreign assets	Total U.S. basis immediately before	Total U.S. basis immediately after	Total basis difference
Cash (Class I)	10u	10u	0u
Inventory (Class IV)	14u	15u	1u
Buildings (Class V)	19u	30u	11u
Total	43u	55u	12u

(ii) *Result.* (A) Under § 1.901(m)–2(b)(1), USP's acquisition of the stock of CFC is a section 338 CAA. Under § 1.901(m)–2(c)(1), the assets of CFC are RFAs for Country F tax purposes because they are relevant in determining foreign income of CFC for Country F tax purposes.

(B) Under paragraph (b)(2) of this section, the requirements of the cumulative basis difference exemption are satisfied if the sum of the basis differences is less than the threshold of $10 million, the greater of $10 million or $5.5 million (10% of the total U.S. basis of $55 million (55 million u translated into dollars at the exchange rate of $1 = 1u)). In this case, the sum of the basis differences is $12 million (12 million u translated into dollars at the exchange rate of $1 = 1 u). Because the sum of the basis differences of $12 million is not less than the threshold of $10 million, the requirements of the cumulative basis difference exemption are not satisfied.

(C) Under paragraph (b)(3) of this section, each of CFC's assets is allocated to its class under § 1.338–6(b) for purposes of the RFA class exemption. The requirements of the

RFA class exemption with respect to the Class IV RFAs (in this case, inventory) are satisfied if the absolute value of the sum of the basis differences with respect to the Class IV RFAs is less than the threshold of $2 million, the greater of $2 million or $1.5 million (10% of the total U.S. basis of Class IV RFAs of $15 million (15 million u translated into dollars at the exchange rate of $1 = 1u)). In this case, the absolute value of the sum of the basis differences is $1 million (1 million u translated into dollars at the exchange rate of $1 = 1 u). Because the sum of the basis differences of $1 million is less than the threshold of $2 million, the requirements of the RFA class exemption are satisfied. Accordingly, the basis differences with respect to the Class IV RFAs are not taken into account under section 901(m).

(D) The requirements of the RFA class exemption with respect to the Class V RFAs (in this case, buildings) is satisfied if the absolute value of the sum of the basis differences with respect to the Class V RFAs is less than the threshold of $3 million, the greater of $2 million or $3 million (10% of the total U.S. basis of Class V RFAs of $30 million (30 million u translated into dollars at the exchange rate of $1 = 1u)). In this case, the absolute value of the sum of the basis differences is $11 million (11 million u translated into dollars at the exchange rate of $1 = 1 u). Because the sum of the basis differences of $11 million is not less than the threshold of $3 million, the requirements of the RFA class exemption are not satisfied. Finally, because the absolute value with respect to each RFA is greater than $20,000, the RFA exemption does not apply. Accordingly, the basis differences with respect to the Class V RFAs are taken into account under section 901(m).

(E) The Class I RFAs (in this case, cash) are irrelevant because there are no basis differences with respect to those RFAs.

(g) *Applicability dates.* This section applies to CAAs occurring on or after March 23, 2020. Taxpayers may, however, choose to apply this section before the date this section is applicable provided that they (along with any persons that are related (within the meaning of section 267(b) or 707(b)) to the taxpayer)—

(1) Consistently apply this section, § 1.704–1(b)(4)(viii)(*c*)(*4*)(*v*) through (*vii*), § 1.901(m)–1, §§ 1.901(m)–3 through 1.901(m)–6 (excluding § 1.901(m)–4(e)), and § 1.901(m)–8 to all CAAs occurring on or after January 1, 2011, and consistently apply § 1.901(m)–2 (excluding § 1.901(m)–2(d)) to all CAAs occurring on or after December 7, 2016, on any original or amended tax return for each taxable year for which the application of the provisions listed in this paragraph (g)(1) affects the tax liability and for which the statute of limitations does not preclude assessment or the filing of a claim for refund, as applicable;

(2) File all tax returns described in paragraph (g)(1) of this section for any taxable year ending on or before March 23, 2020, no later than March 23, 2021; and

(3) Make appropriate adjustments to take into account deficiencies that would have resulted from the consistent application under paragraph (g)(1) of this section for taxable years that are not open for assessment.

§ 1.901(m)–7T [Removed]

■ **Par. 16.** Section 1.901(m)–7T is removed.

■ **Par. 17.** Section 1.901(m)–8 is added to read as follows:

§ 1.901(m)–8 Miscellaneous.

(a) *In general.* This section provides guidance on other matters under section 901(m). Paragraph (b) of this section provides guidance on the application of section 901(m) to pre-1987 foreign income taxes. Paragraph (c) of this section provides anti-abuse rules relating to built-in loss assets. Paragraph (d) of this section provides guidance on the interaction of section 901(m) and section 909. Paragraph (e) of this section provides applicability dates.

(b) *Application of section 901(m) to pre-1987 foreign income taxes.* Section 901(m) and §§ 1.901(m)–1 through 1.901–8 apply to pre-1987 foreign income taxes (as defined in § 1.902–1(a)(10)(iii)) of an applicable foreign corporation.

(c) *Anti-abuse rule for built-in loss RFAs.* A basis difference with respect to an RFA described in section 901(m)(3)(C)(ii) (*built-in loss RFA*) will not be taken into account for purposes of computing an allocated basis difference for a U.S. taxable year of a section 901(m) payor if any RFA, including an RFA other than built-in loss RFAs, is acquired with a principal purpose of using one or more built-in loss RFAs to avoid the application of section 901(m). Furthermore, a basis difference with respect to a built-in loss RFA will not be taken into account for purposes of the cumulative basis difference exemption or the RFA class exemption under § 1.901(m)–7 if any RFAs, including RFAs other than built-in loss RFAs, are acquired with a principal purpose of avoiding the application of section 901(m).

(d) *Interaction with section 909.* The amount of a foreign income tax that is disqualified under section 901(m) is determined before applying section 909. However, section 909 may apply to suspend a deduction for the amount of a foreign income tax that is disqualified under section 901(m).

(e) *Applicability dates.* This section applies to CAAs occurring on or after March 23, 2020. Taxpayers may, however, choose to apply this section before the date this section is applicable provided that they (along with any persons that are related (within the meaning of section 267(b) or 707(b)) to the taxpayer)—

(1) Consistently apply this section, § 1.704–1(b)(4)(viii)(*c*)(*4*)(*v*) through (*vii*), § 1.901(m)–1, and §§ 1.901(m)–3 through 1.901(m)–7 (excluding § 1.901(m)–4(e)) to all CAAs occurring on or after January 1, 2011, and consistently apply § 1.901(m)–2 (excluding § 1.901(m)–2(d)) to all CAAs occurring on or after December 7, 2016, on any original or amended tax return for each taxable year for which the application of the provisions listed in this paragraph (e)(1) affects the tax liability and for which the statute of limitations does not preclude assessment or the filing of a claim for refund, as applicable;

(2) File all tax returns described in paragraph (e)(1) of this section for any taxable year ending on or before March 23, 2020, no later than March 23, 2021; and

(3) Make appropriate adjustments to take into account deficiencies that would have resulted from the consistent application under paragraph (e)(2) of this section for taxable years that are not open for assessment.

§ 1.901(m)–8T [Removed]

■ **Par. 18.** Section 1.901(m)–8T is removed.

Sunita Lough,

Deputy Commissioner for Services and Enforcement.

Approved: February 13, 2020.

David J. Kautter,

Assistant Secretary of the Treasury (Tax Policy).

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2020–0167]

RIN 1625–AA00

Safety Zone; Pacific Ocean, Hilo Harbor, HI—Lightering Operations

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the navigable waters of Hilo Harbor,