



Facts - P carries on business operations in Country X that constitute a permanent establishment under the U.S.-Country X income tax convention. In year 1, a loss is attributable to P 's Country X permanent establishment, as determined under §1.1503(d)-5.

Result - Under §§1.1503(d)-1(b)(4)(i)(A) and 1.367(a)-6T(g)(1), P 's Country X permanent establishment constitutes a foreign branch separate unit. Therefore, the year 1 loss attributable to the foreign branch separate unit constitutes a dual consolidated loss pursuant to §1.1503(d)-1(b)(5)(ii). The dual consolidated loss rules apply to the dual consolidated loss even though there is no affiliate of the foreign branch separate unit in Country X, because it is still possible that all or a portion of the dual consolidated loss can be put to a foreign use. For example, there may be a foreign use with respect to a Country X affiliate acquired in a year subsequent to the year in which the dual consolidated loss was incurred. See §1.1503(d)-6(a)(2). Accordingly, unless an exception under §1.1503(d)-6 applies (such as a domestic use election), the year 1 dual consolidated loss attributable to P 's Country X permanent establishment is subject to the domestic use limitation rule of §1.1503(d)-4(b). As a result, pursuant to §1.1503(d)-4(c), the year 1 dual consolidated loss cannot offset income of P that is not attributable to its Country X foreign branch separate unit, nor can it offset income of any other domestic affiliate. The loss can, however, offset income of the Country X foreign branch separate unit, subject to the application of §1.1503(d)-4(c). The result would be the same even if Country X did not have a consolidation regime that includes as members of consolidated groups Country X branches or permanent establishments of nonresident corporations. The dual consolidated loss rules apply even in the absence of a consolidation regime in the foreign country because it is possible that all or a portion of a dual consolidated loss can be put to a foreign use by other means, such as through a sale, merger, or similar transaction. See §1.1503(d)-6(a)(2).

