

TaxNewsFlash

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Final regulations: Guidance regarding certain disregarded payments and dual consolidated losses (DCLs)

The U.S. Treasury Department and IRS today released [final regulations](#) (T.D. 10026) regarding certain disregarded payments that give rise to deductions for foreign tax purposes and avoid the application of the dual consolidated loss (DCL) rules.

The final regulations finalize the rules from the proposed regulations issued in August 2024 (read [TaxNewsFlash](#)) that relate to disregarded payment losses (DPLs), including portions that are also relevant for DCLs, such as the anti-avoidance rule and the deemed ordering rule. The final regulations retain the basic approach and structure of those rules under the proposed regulations, with certain revisions.

The final DPL rules, including the DPL anti-avoidance rule, apply to tax years of disregarded payment entity (DPE) owners beginning on or after January 1, 2026. However, the final regulations apply the anti-avoidance rule to DCLs incurred in tax years ending on or after August 6, 2024, consistent with the approach in the proposed regulations. The final regulations also apply the rule regarding the non-application of the 60-month limitation for an entity that, absent an election to change its classification, would become a DPE as of August 6, 2024.

The final regulations did not finalize the rules from the proposed regulations that would modify the DCL rules to provide that a “foreign use” of a DCL occurs as a result of jurisdictional blending under the Pillar Two global anti-base erosion (GloBE) model rules. Instead of finalizing this change, the preamble to the final regulations extends the related transition rule period in the proposed regulations to DCLs incurred in tax years beginning before August 31, 2025. The related transition rule provides that the DCL rules will apply without taking into account qualifying domestic minimum top-up taxes (QDMTTs) or top-up taxes collected under an income inclusion rule (IIR) or undertaxed profits rule (UTPR). The additional transition relief does not affect the application of the DPL rules because the DPL rules do not apply until tax years beginning on or after January 1, 2026.

The various other changes set forth in the August 2024 proposed regulations, such as the clarification of the treatment of intercompany transactions under Treas. Reg. § 1.1502-13 for purposes of the DCL rules, remain still in proposed form. Treasury indicated that it intends to finalize these other provisions in a separate

guidance package, and did not give any express statement as to whether the effective date for the rules that were proposed to apply to 2024 tax years would similarly be delayed.

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