

the loss), since 100 shares of substantially identical Z stock (½ of the stock) were acquired within the 61 day period. Paragraph (a)(2) of this section then applies to disallow that portion of the loss allowed under paragraph (a)(1) of this section (\$210-\$100=\$110) equal to the excess of the total unrecognized gain in the Z stock and call option positions (successor positions to the Z stock loss position, and offsetting positions to the put option loss position) (\$120+\$88=\$208) over the \$100 loss disallowed under paragraph (a)(1) of this section (\$208-\$100=\$108; \$110-\$108=\$2).

*Example 27.* On January 27, 1986, A enters into offsetting long (L1) and short (S1) positions. Neither L1 nor S1 nor any other positions entered into by A in 1986 are stock or securities. On February 3, 1986, A disposes of L1 at a \$10 loss. On February 5, 1986, A enters into a new long position (L2) that is offsetting to S1. On October 15, 1986, A disposes of S1 at an \$11 loss. On October 17, 1986, A enters into a new short position (S2) that is offsetting to L2. On December 30, 1986, A disposes of L2 at a \$12 loss. On December 31, 1986, A enters into a new long position (L3) that is offsetting to S2. At year-end, S2 has an unrecognized gain of \$33. Paragraph (a)(1) of this section does not apply since none of the positions were shares of stock or securities. However, all \$33 (\$10+\$11+\$12) of the losses sustained with respect to L1, S1 and L2 will be disallowed under paragraph (a)(2) because there is \$33 of unrecognized gain in S2 at year-end. The \$10 loss from the disposition of L1 is disallowed because S2 is or was an offsetting position to a successor long position (L2 or L3). The \$11 loss from the disposition of S1 is disallowed because S2 is a successor position to S1. The \$12 loss from the disposition of L2 is disallowed because S2 was an offsetting position to L2.

(Secs. 1092(b) and 7805 of the Internal Revenue Code of 1954 (68A Stat. 917, 95 Stat. 324, 26 U.S.C. 1092(b), 7805) and sec. 102(h) of the Tax Reform Act of 1984 (98 Stat. 625))

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**§ 1.1092(b)-2T Treatment of holding periods and losses with respect to straddle positions (temporary).**

(a) *Holding period*—(1) *In general.* Except as otherwise provided in this section, the holding period of any position that is part of a straddle shall not begin earlier than the date the taxpayer no longer holds directly or indirectly (through a related person or flowthrough entity) an offsetting position with respect to that position. See § 1.1092(b)-5T relating to definitions.

(2) *Positions held for the long-term capital gain holding period (or longer) prior to establishment of the straddle.* Paragraph (a)(1) of this section shall not apply to a position held by a taxpayer for the long-term capital gain holding period (or longer) before a straddle that includes such position is established. The determination of whether a position has been held by a taxpayer for the long-term capital gain holding period (or longer) shall be made by taking into account the application of paragraph (a)(1) of this section. See section 1222(3) relating to the holding period for long-term capital gains.

(b) *Treatment of loss*—(1) *In general.* Except as provided in paragraph (b)(2) of this section, loss on the disposition of one or more positions (*loss position*) of a straddle shall be treated as a long-term capital loss if—

(i) On the date the taxpayer entered into the loss position the taxpayer held directly or indirectly (through a related person or flowthrough entity) one or more offsetting positions with respect to the loss position; and

(ii) All gain or loss with respect to one or more positions in the straddle would be treated as long-term capital gain or loss if such positions were disposed of on the day the loss position was entered into.

(2) *Special rules for non-section 1256 positions in a mixed straddle.* Loss on the disposition of one or more positions (*loss position*) that are part of a mixed straddle and that are non-section 1256 positions shall be treated as 60 percent long-term capital loss and 40 percent short-term capital loss if—

(i) Gain or loss from the disposition of one or more of the positions of the straddle that are section 1256 contracts would be considered gain or loss from the sale or exchange of a capital asset;

(ii) The disposition of no position in the straddle (other than a section 1256 contract) would result in a long-term capital gain or loss; and

(iii) An election under section 1092(b)(2)(A)(i)(I) (relating to straddle-by-straddle identification) or 1092(b)(2)(A)(i)(II) (relating to mixed straddle accounts) has not been made.

(c) *Exceptions*—(1) *In general.* This section shall not apply to positions that—

(i) Constitute part of a hedging transaction;

(ii) Are included in a straddle consisting only of section 1256 contracts; or

(iii) Are included in a mixed straddle account (as defined in paragraph (b) of § 1.1092(b)-4T).

(2) *Straddle-by-straddle identification.* Paragraphs (a)(2) and (b) of this section shall not apply to positions in a section 1092(b)(2) identified mixed straddle. See § 1.1092(b)-3T.

(d) *Special rule for positions held by regulated investment companies.* For purposes of section 851(b)(3) (relating to the definition of a regulated investment company), the holding period rule of paragraph (a) of this section shall not apply to positions of a straddle. However, if section 1233(b) (without regard to sections 1233(e)(2)(A) and 1092(b)) would have applied to such positions, then for purposes of section 851(b)(3) the rules of section 1233(b) shall apply. Similarly, the effect of daily marking-to-market provided under § 1.1092(b)-4T(c) will be disregarded for purposes of section 851(b)(3).

(e) *Effective date—(1) In general.* Except as provided in paragraph (e)(2) of this section, the provisions of this section apply to positions in a straddle established after June 23, 1981, in taxable years ending after such date.

(2) *Special effective date for mixed straddle positions.* The provisions of paragraph (b)(2) of this section shall apply to positions in a mixed straddle established on or after January 1, 1984.

(f) *Examples.* Paragraphs (a) through (e) may be illustrated by the following examples. It is assumed in each example that the following positions are the only positions held directly or indirectly (through a related person or flowthrough entity) by an individual calendar year taxpayer during the taxable year and none of the exceptions in paragraph (c) of this section apply.

*Example 1.* On October 1, 1984, A acquires gold. On January 1, 1985, A enters into an offsetting short gold forward contract. On April 1, 1985, A disposes of the short gold forward contract at no gain or loss. On April 10, 1985, A sells the gold at a gain. Since the gold had not been held for more than 6 months before the offsetting short position was entered into, the holding period for the gold begins

no earlier than the time the straddle is terminated. Thus, the holding period of the original gold purchased on October 1, 1984, and sold on April 10, 1985, begins on April 1, 1985, the date the straddle was terminated. Consequently, gain recognized with respect to the gold will be treated as short-term capital gain.

*Example 2.* On January 1, 1985, A enters into a long gold forward contract. On May 1, 1985, A enters into an offsetting short gold regulated futures contract. A does not make an election under section 1256(d) or 1092(b)(2)(A). On August 1, 1985, A disposes of the gold forward contract at a gain. Since the forward contract had not been held by A for more than 6 months prior to the establishment of the straddle, the holding period for the forward contract begins no earlier than the time the straddle is terminated. Thus, the gain recognized on the closing of the gold forward contract will be treated as short-term capital gain.

*Example 3.* Assume the facts are the same as in example (2), except that A disposes of the short gold regulated futures contract on July 1, 1985, at no gain or loss and the forward contract on November 1, 1985. Since the forward contract had not been held for more than 6 months before the mixed straddle was established, the holding period for the forward contract begins July 1, 1985, the date the straddle terminated. Thus, the gain recognized on the closing of the forward contract will be treated as short-term capital gain.

*Example 4.* On January 1, 1985, A enters into a long gold forward contract and on August 4, 1985, A enters into an offsetting short gold forward contract. On September 1, 1985, A disposes of the short position at a loss. Since an offsetting long position had been held by A for more than 6 months prior to the acquisition of the offsetting short position, the loss with respect to the closing of the short position will be treated as long-term capital loss.

*Example 5.* On March 1, 1985, A enters into a long gold forward contract and on July 17, 1985, A enters into an offsetting short gold regulated futures contract. A does not make an election under section 1256(d) or 1092(b)(2)(A). On August 10, 1985, A disposes of the long gold forward contract at a loss. Since the gold forward contract was part of a mixed straddle, and the disposition of no position in the straddle (other than the regulated futures contract) would give rise to a long-term capital loss, the loss recognized on the termination of the gold forward contract will be treated as 40 percent short-term capital loss and 60 percent long-term capital loss.

*Example 6.* Assume the facts are the same as in example (5), except that on August 11, 1985, A disposes of the short gold regulated

futures contract at a gain. Under these circumstances, the gain will be treated as 60 percent long-term capital gain and 40 percent short-term capital gain since the holding period rules of paragraph (a) of this section are not applicable to section 1256 contracts.

*Example 7.* Assume the facts are the same as in example (5), except that A enters into the long gold forward contract on January 1, 1985, and does not dispose of the long gold forward contract but instead on August 10, 1985, disposes of the short gold regulated futures contract at a loss. Under these circumstances, the loss will be treated as a long-term capital loss since A held an offsetting non-section 1256 position for more than 6 months prior to the establishment of the straddle. However, such loss may be subject to the rules of § 1.1092(b)-1T.

(Secs. 1092(b) and 7805 of the Internal Revenue Code of 1954 (68A Stat. 917, 95 Stat. 324, 26 U.S.C. 1092(b), 7805) and sec. 102(h) of the Tax Reform Act of 1984 (98 Stat. 625))

[T.D. 8007, 50 FR 3320, Jan. 24, 1985, as amended by T.D. 8070, 51 FR 1788, Jan. 15, 1986]

**§ 1.1092(b)-3T Mixed straddles; straddle-by-straddle identification under section 1092(b)(2)(A)(i)(I) (temporary).**

(a) *In general.* Except as otherwise provided, a taxpayer shall treat in accordance with paragraph (b) of this section gains and losses on positions that are part of a mixed straddle for which the taxpayer has made an election under paragraph (d) of this section (hereinafter referred to as a *section 1092(b)(2) identified mixed straddle*). No election may be made under this section for any straddle composed of one or more positions that are includible in a mixed straddle account (as defined in paragraph (b) of § 1.1092(b)-4T) or for any straddle for which an election under section 1256(d) has been made. See § 1.1092(b)-5T relating to definitions.

(b) *Treatment of gains and losses from positions included in a section 1092(b)(2) identified mixed straddle—(1) In general.* Gains and losses from positions that are part of a section 1092(b)(2) identified mixed straddle shall be determined and treated in accordance with the rules of paragraph (b) (2) through (7) of this section.

(2) *All positions of a section 1092(b)(2) identified mixed straddle are disposed of on the same day.* If all positions of a

section 1092(b)(2) identified mixed straddle are disposed of (or deemed disposed of) on the same day, gains and losses from section 1256 contracts in the straddle shall be netted, and gains and losses from non-section 1256 positions in the straddle shall be netted. Net gain or loss from the section 1256 contracts shall then be offset against net gain or loss from the non-section 1256 positions to determine the net gain or loss from the straddle. If net gain or loss from the straddle is attributable to the positions of the straddle that are section 1256 contracts, such gain or loss shall be treated as 60 percent long-term capital gain or loss and 40 percent short-term capital gain or loss. If net gain or loss from the straddle is attributable to the positions of the straddle that are non-section 1256 positions, such gain or loss shall be treated as short-term capital gain or loss. This paragraph (b)(2) may be illustrated by the following examples. It is assumed in each example that the positions are the only positions held directly or indirectly (through a related person or flowthrough entity) by an individual calendar year taxpayer during the taxable year.

*Example 1.* On April 1, 1985, A enters into a non-section 1256 position and an offsetting section 1256 contract and makes a valid election to treat such straddle as a section 1092(b)(2) identified mixed straddle. On April 10, 1985, A disposes of the non-section 1256 position at a \$600 loss and the section 1256 contract at a \$600 gain. Under these circumstances, the \$600 loss on the non-section 1256 position will be offset against the \$600 gain on the section 1256 contract and the net gain or loss from the straddle will be zero.

*Example 2.* Assume the facts are the same as in example (1), except that the gain on the section 1256 contract is \$800. Under these circumstances, the \$600 loss on the non-section 1256 position will be offset against the \$800 gain on the section 1256 contract. The net gain of \$200 from the straddle will be treated as 60 percent long-term capital gain and 40 percent short-term capital gain because it is attributable to the section 1256 contract.

*Example 3.* Assume the facts are the same as in example (1), except that the loss on the non-section 1256 position is \$800. Under these circumstances, the \$600 gain on the section 1256 contract will be offset against the \$800 loss on the non-section 1256 position. The net loss of \$200 from the straddle will be treated as short-term capital loss because it is attributable to the non-section 1256 position.