

(b) An agreement to the terms and conditions of a change in method of accounting under §1.446-1(e)(3), including the taxable year or years prescribed by the Commissioner under that section (or an alternative method described in paragraph (a) of this section) for taking the amount of the adjustments under section 481(a) into account, shall be in writing and shall be signed by the Commissioner and the taxpayer. It shall set forth the items to be adjusted, the amount of the adjustments, the taxable year or years for which the adjustments are to be taken into account, and the amount of the adjustments allocable to each year. The agreement shall be binding on the parties except upon a showing of fraud, malfeasance, or misrepresentation of material fact.

[T.D. 8608, 60 FR 40079, Aug. 7, 1995]

§ 1.481-5 Effective dates.

Sections 1.481-1, 1.481-2, 1.481-3, and 1.481-4 are effective for Consent Agreements signed on or after December 27, 1994. For Consent Agreements signed before December 27, 1994, see §§1.481-1, 1.481-2, 1.481-3, 1.481-4, and 1.481-5 (as contained in the 26 CFR part 1 edition revised as of April 1, 1995).

[T.D. 8608, 60 FR 40079, Aug. 7, 1995]

§ 1.482-0 Outline of regulations under section 482.

This section contains major captions for §§1.482-1 through 1.482-9.

§1.482-1 Allocation of income and deductions among taxpayers.

- (a) In general.
 - (1) Purpose and scope.
 - (2) Authority to make allocations.
 - (3) Taxpayer's use of section 482.
- (b) Arm's length standard.
 - (1) In general.
 - (2) Arm's length methods.
 - (i) [Reserved]. For further guidance, see §1.482-0T, the entry for §1.482-1T(b)(2)(i).
 - (ii) Selection of category of method applicable to transaction.
 - (iii) [Reserved] For further guidance, see §1.482-0T, the entry for §1.482-1T(b)(2)(iii).
- (c) Best method rule.
 - (1) In general.
 - (2) Determining the best method.
 - (i) Comparability.
 - (ii) Data and assumptions.
 - (A) Completeness and accuracy of data.
 - (B) Reliability of assumptions.

(C) Sensitivity of results to deficiencies in data and assumptions.

(iii) Confirmation of results by another method.

(d) Comparability.

(1) In general.

(2) Standard of comparability.

(3) Factors for determining comparability.

(i) Functional analysis.

(ii) Contractual terms.

(A) In general.

(B) Identifying contractual terms.

(1) Written agreement.

(2) No written agreement.

(C) Examples.

(iii) Risk.

(A) In general.

(B) Identification of party that bears risk.

(C) Examples.

(iv) Economic conditions.

(v) Property or services.

(4) Special circumstances.

(i) Market share strategy.

(ii) Different geographic markets.

(A) In general.

(B) Example.

(C) Location savings.

(D) Example.

(iii) Transactions ordinarily not accepted as comparables.

(A) In general.

(B) Examples.

(e) Arm's length range.

(1) In general.

(2) Determination of arm's length range.

(i) Single method.

(ii) Selection of comparables.

(iii) Comparables included in arm's length range.

(A) In general.

(B) Adjustment of range to increase reliability.

(C) Interquartile range.

(3) Adjustment if taxpayer's results are outside arm's length range.

(4) Arm's length range not prerequisite to allocation.

(5) Examples.

(f) Scope of review.

(1) In general.

(i) Intent to evade or avoid tax not a prerequisite.

(ii) Realization of income not a prerequisite.

(A) In general.

(B) Example.

(iii) Nonrecognition provisions may not bar allocation.

(A) In general.

(B) Example.

(iv) Consolidated returns.

(2) Rules relating to determination of true taxable income.

(i) Aggregation of transactions.

(A) In general.

(B) Examples.

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- (ii) Allocation based on taxpayer's actual transactions.
 - (A) In general.
 - (B) Example.
- (iii) Multiple year data.
 - (A) In general.
 - (B) Circumstances warranting consideration of multiple year data.
 - (C) Comparable effect over comparable period.
 - (D) Applications of methods using multiple year averages.
 - (E) Examples.
- (iv) Product lines and statistical techniques.
- (v) Allocations apply to results, not methods.
 - (A) In general.
 - (B) Example.
 - (g) Collateral adjustments with respect to allocations under section 482.
 - (1) In general.
 - (2) Correlative allocations.
 - (i) In general.
 - (ii) Manner of carrying out correlative allocation.
 - (iii) Events triggering correlative allocation.
 - (iv) Examples.
 - (3) Adjustments to conform accounts to reflect section 482 allocations.
 - (i) In general.
 - (ii) Example.
 - (4) Setoffs.
 - (i) In general.
 - (ii) Requirements.
 - (iii) Examples.
 - (h) Special rules.
 - (1) Small taxpayer safe harbor. [Reserved]
 - (2) Effect of foreign legal restrictions.
 - (i) In general.
 - (ii) Applicable legal restrictions.
 - (iii) Requirement for electing the deferred income method of accounting.
 - (iv) Deferred income method of accounting.
 - (v) Examples.
 - (3) Coordination with section 936.
 - (i) Cost sharing under section 936.
 - (ii) Use of terms.
 - (i) Definitions.
 - (j) Effective/applicability date.

§ 1.482-2 *Determination of taxable income in specific situations.*

- (a) Loans or advances.
 - (1) Interest on bona fide indebtedness.
 - (i) In general.
 - (ii) Application of paragraph (a) of this section.
 - (A) Interest on bona fide indebtedness.
 - (B) Alleged indebtedness.
 - (iii) Period for which interest shall be charged.
 - (A) General rule.
 - (B) Exception for certain intercompany transactions in the ordinary course of business.

- (C) Exception for trade or business of debtor member located outside the United States.
- (D) Exception for regular trade practice of creditor member or others in creditor's industry.
- (E) Exception for property purchased for resale in a foreign country.
 - (1) General rule.
 - (2) Interest-free period.
 - (3) Average collection period.
 - (4) Illustration.
- (iv) Payment; book entries.
 - (2) Arm's length interest rate.
 - (i) In general.
 - (ii) Funds obtained at situs of borrower.
 - (iii) Safe haven interest rates for certain loans and advances made after May 8, 1986.
 - (A) Applicability.
 - (1) General rule.
 - (2) Grandfather rule for existing loans.
 - (B) Safe haven interest rate based on applicable Federal rate.
 - (C) Applicable Federal rate.
 - (D) Lender in business of making loans.
 - (E) Foreign currency loans.
 - (3) Coordination with interest adjustments required under certain other Internal Revenue Code sections.
 - (4) Examples.
 - (b) Rendering of services.
 - (c) Use of tangible property.
 - (1) General rule.
 - (2) Arm's length charge.
 - (i) In general.
 - (ii) Safe haven rental charge.
 - (iii) Subleases.
 - (d) Transfer of property.
 - (e) [Reserved] For further guidance, see § 1.482-0T, the entry for § 1.482-2T(e).
 - (f) Effective/applicability date.

§ 1.482-3 *Methods to determine taxable income in connection with a transfer of tangible property.*

- (a) In general.
- (b) Comparable uncontrolled price method.
 - (1) In general.
 - (2) Comparability and reliability considerations.
 - (i) In general.
 - (ii) Comparability.
 - (A) In general.
 - (B) Adjustments for differences between controlled and uncontrolled transactions.
 - (iii) Data and assumptions.
 - (3) Arm's length range.
 - (4) Examples.
 - (5) Indirect evidence of comparable uncontrolled transactions.
 - (i) In general.
 - (ii) Limitations.
 - (iii) Examples.
 - (c) Resale price method.
 - (1) In general.
 - (2) Determination of arm's length price.
 - (i) In general.

- (ii) Applicable resale price.
- (iii) Appropriate gross profit.
- (iv) Arm's length range.
- (3) Comparability and reliability considerations.
 - (i) In general.
 - (ii) Comparability.
 - (A) Functional comparability.
 - (B) Other comparability factors.
 - (C) Adjustments for differences between controlled and uncontrolled transactions.
 - (D) Sales agent.
 - (iii) Data and assumptions.
 - (A) In general.
 - (B) Consistency in accounting.
- (4) Examples.
 - (d) Cost plus method.
 - (1) In general.
 - (2) Determination of arm's length price.
 - (i) In general.
 - (ii) Appropriate gross profit.
 - (iii) Arm's length range.
 - (3) Comparability and reliability considerations.
 - (i) In general.
 - (ii) Comparability.
 - (A) Functional comparability.
 - (B) Other comparability factors.
 - (C) Adjustments for differences between controlled and uncontrolled transactions.
 - (D) Purchasing agent.
 - (iii) Data and assumptions.
 - (A) In general.
 - (B) Consistency in accounting.
 - (4) Examples.
 - (e) Unspecified methods.
 - (1) In general.
 - (2) Example.
 - (f) Coordination with intangible property rules.

§1.482-4 Methods to determine taxable income in connection with a transfer of intangible property.

- (a) In general.
- (b) Definition of intangible.
- (c) Comparable uncontrolled transaction method.
 - (1) In general.
 - (2) Comparability and reliability considerations.
 - (i) In general.
 - (ii) Reliability.
 - (iii) Comparability.
 - (A) In general.
 - (B) Factors to be considered in determining comparability.
 - (1) Comparable intangible property.
 - (2) Comparable circumstances.
 - (iv) Data and assumptions.
 - (3) Arm's length range.
 - (4) Examples.
 - (d) Unspecified methods.
 - (1) In general.
 - (2) Example.
 - (e) Coordination with tangible property rules.

- (f) Special rules for transfers of intangible property.
 - (1) Form of consideration.
 - (2) Periodic adjustments.
 - (i) General rule.
 - (ii) Exceptions.
 - (A) Transactions involving the same intangible.
 - (B) Transactions involving comparable intangible.
 - (C) Methods other than comparable uncontrolled transaction.
 - (D) Extraordinary events.
 - (E) Five-year period.
 - (iii) Examples.
 - (3) Ownership of intangible property.
 - (i) Identification of owner.
 - (A) In general.
 - (B) [Reserved] For further guidance, see §1.482-0T, the entry for §1.482-4T(f)(3)(i)(B).
 - (ii) Examples.
 - (4) Contribution to the value of intangible property owned by another.
 - (i) In general.
 - (ii) Examples.
 - (5) Consideration not artificially limited.
 - (6) Lump sum payments
 - (i) In general.
 - (ii) Exceptions.
 - (iii) Example.
 - (g) [Reserved] For further guidance, see §1.482-0T, the entry for §1.482-4T(g).
 - (h) Effective/applicability date.

§ 1.482-5 Comparable profits method.

- (a) In general.
- (b) Determination of arm's length result.
 - (1) In general.
 - (2) Tested party.
 - (i) In general.
 - (ii) Adjustments for tested party.
 - (3) Arm's length range.
 - (4) Profit level indicators.
 - (i) Rate of return on capital employed.
 - (ii) Financial ratios.
 - (iii) Other profit level indicators.
 - (c) Comparability and reliability considerations.
 - (1) In general.
 - (2) Comparability.
 - (i) In general.
 - (ii) Functional, risk and resource comparability.
 - (iii) Other comparability factors.
 - (iv) Adjustments for differences between tested party and the uncontrolled taxpayers.
 - (3) Data and assumptions.
 - (i) In general.
 - (ii) Consistency in accounting.
 - (iii) Allocations between the relevant business activity and other activities.
 - (d) Definitions.
 - (e) Examples.

§1.482-6 Profit split method.

- (a) In general.

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(iii) Comparability and reliability considerations—Data and assumptions—Consistency

- in accounting.
- (3) Examples.
- (g) Profit split method.
- (1) In general.
- (2) Examples.
- (h) Unspecified methods.
- (i) Contingent-payment contractual terms for services.

(1) Contingent-payment contractual terms recognized in general.

- (2) Contingent-payment arrangement.
- (i) General requirements.
- (A) Written contract.
- (B) Specified contingency.
- (C) Basis for payment.
- (i) Economic substance and conduct.
- (3) Commissioner's authority to impute contingent-payment terms.
- (4) Evaluation of arm's length charge.
- (5) Examples.
- (j) Total services costs.
- (k) Allocation of costs.
- (1) In general.
- (2) Appropriate method of allocation and apportionment.
- (i) Reasonable method standard.
- (ii) Use of general practices.
- (3) Examples.
- (1) Controlled services transaction.
- (1) In general.
- (2) Activity.
- (3) Benefit.
- (i) In general.
- (ii) Indirect or remote benefit.
- (iii) Duplicative activities.
- (iv) Shareholder activities.
- (v) Passive association.
- (4) Disaggregation of transactions.
- (5) Examples.
- (m) Coordination with transfer pricing rules for other transactions.
- (1) Services transactions that include other types of transactions.
- (2) Services transactions that effect a transfer of intangible property.
- (3) [Reserved] For further guidance, see §1.482-0T, the entry for §1.482-9T(m)(3).
- (4) Other types of transactions that include controlled services transactions.
- (5) Examples.
- (n) Effective/applicability date.
- (1) In general.
- (2) Election to apply regulations to earlier taxable years.

[T.D. 8552, 59 FR 34988, July 8, 1994, as amended by T.D. 8632, 60 FR 65557, Dec. 20, 1995; 61 FR 7157, Feb. 26, 1996; T.D. 8670, 61 FR 21956, May 13, 1996; T.D. 9088, 68 FR 51177, Aug. 26, 2003; T.D. 9278, 71 FR 44479, Aug. 4, 2006; T.D. 9441, 74 FR 348, Jan. 5, 2009, 74 FR 9571, Mar. 5, 2009; T.D. 9456, 74 FR 38837, Aug. 4, 2009]

EDITORIAL NOTE: At 71 FR 44479, Aug. 8, 2006, section 1.482-0 was amended by revising

the entry for (f)(2)(ii)(B). However, because of inaccurate amendatory language, this amendment could not be incorporated. For the convenience of the user, the language at 71 FR 44479 is set forth as follows:

§ 1.482-0 Outline of regulations under section 482.

- * * * * *
- (f) * * *
- (2) * * *
- (ii) * * *
- (A) [Reserved]. For further guidance, see §1.482-0T, the entry for §1.482-1T(f)(2)(ii)(A).
- (iii) * * *
- (B) [Reserved]. For further guidance, see §1.482-0T, the entry for §1.482-1T(f)(2)(iii)(B).

§ 1.482-0T Outline of regulations under section 482 (temporary).

This section contains major captions for §§1.482-1T, 1.482-2T, 1.482-4T, 1.482-7T, 1.482-8T, and 1.482-9T.

§ 1.482-1T Allocation of income and deductions among taxpayers (temporary).

- (a) through (b)(2) [Reserved] For further guidance, see §1.482-0, the entries for §1.482-1(a) through (b)(2).
- (i) Methods.
- (ii) [Reserved] For further guidance, see §1.482-0, the entry for §1.482-1(b)(2)(ii).
- (iii) Coordination of methods applicable to certain intangible development arrangements.
- (c) through (i) [Reserved] For further guidance, see §1.482-0, the entries for §1.482-1(c) through (i).
- (j) Effective/applicability date.
- (k) Expiration date.

§ 1.482-2T Determination of taxable income in specific situations (temporary).

- (a) through (d) [Reserved] For further guidance, see §1.482-0, the entries for §1.482-2(a) through (d).
- (e) Cost sharing arrangement.
- (f) Effective/applicability date.
- (1) In general.
- (2) Election to apply regulation to earlier taxable years.
- (3) Expiration date.

§ 1.482-4T Methods to determine taxable income in connection with a transfer of intangible property (temporary).

- (a) through (f)(3)(i)(A) [Reserved] For further guidance, see §1.482-0, the entries for §1.482-4(a) through (f)(3)(i)(A).
- (B) Cost sharing arrangements.
- (f)(3)(ii) through (f)(6) [Reserved] For further guidance, see §1.482-0, the entries for §1.482-4(f)(3)(ii) through (f)(6).