

correspond to the value provided between the parties, regardless of the form of the transaction. Accordingly, the arm's length compensation for the ROW intangibles is the same in both scenarios, and the analysis of the amount to be taken into account under section 367(d) pursuant to §§ 1.367(d)-1T(c) and 1.482-4 should include consideration of the amount that P would have charged for the realistic alternative determined under § 1.482-7(g) (and § 1.482-4, to the extent of any make-or-sell rights transferred). See §§ 1.482-1(b)(2)(iii) and 1.482-4(g).

*Example 9. Aggregation of interrelated manufacturing and marketing intangibles governed by different statutes and regulations.* The facts are the same as in *Example 8* except that P transfers only the ROW intangibles related to manufacturing to S1 in an exchange described in section 351 and, upon entering into the CSA, then transfers the ROW intangibles related to marketing to S1 in a platform contribution transaction described in § 1.482-7(c) (rather than transferring all ROW intangibles only upon entering into the CSA or only in a prior exchange described in section 351). The value of the ROW intangibles that P transferred in the two transactions is greater in the aggregate, due to synergies among the different types of ROW intangibles, than if valued as two separate transactions. Under paragraph (f)(2)(i)(B) of this section, the arm's length standard requires these synergies to be taken into account in determining the arm's length results for the transactions.

*Example 10. Services provided using intangibles.*—(i) P's worldwide group produces and markets Product X and subsequent generations of products, which result from research and development performed by P's R&D Team. Through this collaboration with respect to P's proprietary products, the members of the R&D Team have individually and as a group acquired specialized knowledge and expertise subject to non-disclosure agreements (collectively, "knowhow").

(ii) P arranges for the R&D Team to provide research and development services to create a new line of products, building on the Product X platform, to be owned and exploited by S1 in the overseas market. P asserts that the arm's length charge for the services is only reimbursement to P of its associated R&D Team compensation costs.

(iii) Even though P did not transfer the platform or the R&D Team to S1, P is providing value associated with the use of the platform, along with the value associated with the use of the knowhow, to S1 by way of the services performed by the R&D Team for S1 using the platform and the knowhow. The R&D Team's use of intangible property, and any other valuable resources, in P's provision of services (regardless of whether the service effects a transfer of intangible property or valuable resources and regardless of whether the property is relatively high or low value) must be evaluated under the section 482 regulations, including the regulations specifically applicable to controlled services transactions in § 1.482-9, to ensure that P receives arm's length compensation for any value (attributable to such property or services) provided to S1 in

a controlled transaction. See §§ 1.482-4 and 1.482-9(m). Under paragraph (f)(2)(i)(A) of this section, the arm's length compensation for the services performed by the R&D Team for S1 must be consistent with the value provided to S1, including the value of the knowhow and any synergies with the platform. Under paragraphs (f)(2)(i)(B) and (C) of this section, the best method analysis may determine that the compensation is most reliably determined on an aggregate basis reflecting the interrelated value of the services and embedded value of the platform and knowhow.

(iv) In the alternative, the facts are the same as above, except that P assigns to S1 all or a pertinent portion of the R&D Team and the relevant rights in the platform. P takes the position that, although the transferred platform rights must be compensated, the knowhow does not have substantial value independent of the services of any individual on the R&D Team and therefore is not an intangible within the meaning of § 1.482-4(b). In P's view, S1 owes no compensation to P on account of the R&D Team, as S1 will directly bear the cost of the relevant R&D Team compensation. However, in assembling and arranging to assign the relevant R&D Team, and thereby making available the value of the knowhow to S1, rather than other employees without the knowhow, P is performing services for S1 under imputed contractual terms based on the parties' course of conduct. Therefore, even if P's position were correct that the knowhow is not an intangible under § 1.482-4(b), a position that the Commissioner may challenge, arm's length compensation is required for all of the value that P provides to S1 through the interrelated provision of platform rights, knowhow, and services under paragraphs (f)(2)(i)(A), (B), and (C) of this section.

*Example 11. Allocating arm's length compensation determined under an aggregate analysis*—(i) P provides services to S1, which is incorporated in Country A. In connection with those services, P licenses intellectual property to S2, which is incorporated in Country B. S2 sublicenses the intellectual property to S1.

(ii) Under paragraph (f)(2)(i)(B) of this section, if an aggregate analysis of the service and license transactions provides the most reliable measure of an arm's length result, then an aggregate analysis must be performed. Under paragraph (f)(2)(i)(D) of this section, if an allocation of the value that results from such an aggregate analysis is necessary, for example, for purposes of sourcing the services income that P receives from S1 or determining deductible expenses incurred by S1, then the value determined under the aggregate analysis must be allocated using the method that provides the most reliable measure of the services income and deductible expenses.

(ii)(A) [Reserved]. For further guidance see § 1.482-1(f)(2)(ii)(A).

(B) *Example.* The following example illustrates this paragraph (f)(2)(ii):

*Example.* P and S are controlled taxpayers. P licenses a proprietary process to S for S's use in manufacturing product X. Using its sales and marketing employees, S sells

product X to related and unrelated customers outside the United States. If the license between P and S has economic substance, the Commissioner ordinarily will not restructure the taxpayer's transaction to treat P as if it had elected to exploit directly the manufacturing process. However, because P could have directly exploited the manufacturing process and manufactured product X itself, this realistic alternative may be taken into account under § 1.482-4(d) in determining the arm's length consideration for the controlled transaction. For examples of such an analysis, see *Examples 7* and *8* in paragraph (f)(2)(i)(E) of this section and the *Example* in § 1.482-4(d)(2).

(iii) through (j)(6) [Reserved]. For further guidance see § 1.482-1(f)(2)(iii) through (j)(6).

(7) *Certain effective/applicability dates*—(i) Paragraphs (f)(2)(i)(A) through (E) and (f)(2)(ii)(B) of this section apply to taxable years ending on or after September 14, 2015.

(ii) *Expiration date.* The applicability of paragraphs (f)(2)(i)(A) through (E) and (f)(2)(ii)(B) of this section expires on or before September 14, 2018.

**John Dalrymple,**

*Deputy Commissioner for Services and Enforcement.*

Approved: September 10, 2015.

**Mark J. Mazur,**

*Assistant Secretary of the Treasury (Tax Policy).*

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#### Basis in Interests in Tax-Exempt Trusts

##### Correction

In document 2015-19846, appearing on pages 48249 through 48251 in the issue of Wednesday, August 12, 2015, make the following correction:

On page 48249, in the first column, on the eighth line from the bottom, under the heading "DATES:" "August 13, 2015" should read "August 12, 2015".

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