

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 482.

This section contains major captions for §§ 1.482-1 through 1.482-8.

§ 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) Methods.
 - (ii) Selection of category of method applicable to transaction.
 - (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.
 - (f) Written agreement.
 - (g) 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.
 - (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.

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- (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 dates.

§ 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) Performance of services for another.
 - (1) General rule.
 - (2) Benefit test.
 - (3) Arm's length charge.
 - (4) Costs or deductions to be taken into account.
 - (5) Costs and deductions not to be taken into account.
 - (6) Methods.
 - (7) Certain services.
 - (8) Services rendered in connection with the transfer of property.
 - (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.

§ 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) In general.
 - (ii) Identification of the owner.
 - (A) Legally protected intangible property.
 - (B) Intangible property that is not legally protected.
 - (iii) Allocations with respect to assistance provided to the owner.
 - (iv) Examples.
 - (4) Consideration not artificially limited.
 - (5) Lump sum payments.
 - (i) In general.
 - (ii) Exceptions.
 - (iii) Example.

§ 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.
- (b) Appropriate share of profits and losses.
- (c) Application.
 - (1) In general.
 - (2) Comparable profit split.
 - (i) In general.
 - (ii) Comparability and reliability considerations.
 - (A) In general.
 - (B) Comparability.
 - (3) In general.
 - (2) Adjustments for differences between the controlled and uncontrolled taxpayers.
 - (C) Data and assumptions.
 - (D) Other factors affecting reliability.
 - (3) Residual profit split.
 - (i) In general.
 - (A) Allocate income to routine contributions.
 - (B) Allocate residual profit.

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(ii) Comparability and reliability considerations.

- (A) In general.
 - (B) Comparability.
 - (C) Data and assumptions.
 - (D) Other factors affecting reliability.
- (iii) Example.

§ 1.482-7 Sharing of costs.

(a) In general.
(1) Scope and application of the rules in this section.

- (2) Limitation on allocations.
 - (3) Coordination with § 1.482-1.
 - (4) Cross references.
- (b) Qualified cost sharing arrangement.

(c) Participant.
(1) In general.
(2) Treatment of a controlled taxpayer that is not a controlled participant.

- (i) In general.
- (ii) Example.
- (3) Treatment of consolidated group.

(d) Costs.
(1) Intangible development costs.
(2) Stock-based compensation.
(i) In general.
(ii) Identification of stock-based compensation related to intangible development.

(iii) Measurement and timing of stock-based compensation expense.

(A) In general.
(1) Transfers to which section 421 applies.
(2) Deductions of foreign controlled participants.

(3) Modification of stock option.
(4) Expiration or termination of qualified cost sharing arrangement.

(B) Election with respect to options on publicly traded stock.

(1) In general.
(2) Publicly traded stock.
(3) Generally accepted accounting principles.

(4) Time and manner of making the election.

(C) Consistency.
(3) Examples.

(e) Anticipated benefits.
(1) Benefits.

(2) Reasonably anticipated benefits.
(f) Cost allocations.

(1) In general.
(2) Share of intangible development costs.

(i) In general.
(ii) Example.

(3) Share of reasonably anticipated benefits.

(i) In general.
(ii) Measure of benefits.

(iii) Indirect bases for measuring anticipated benefits.

(A) Units used, produced or sold.
(B) Sales.

(C) Operating profit.
(D) Other bases for measuring anticipated benefits.

(E) Examples.
(iv) Projections used to estimate anticipated benefits.

(A) In general.
(B) Unreliable projections.

(C) Foreign-to-foreign adjustments.
(D) Examples.

(4) Timing of allocations.
(g) Allocations of income, deductions or other tax items to reflect transfers of intangibles (buy-in).

(1) In general.
(2) Pre-existing intangibles.

(3) New controlled participant.
(4) Controlled participant relinquishes interests.

(5) Conduct inconsistent with the terms of a cost sharing arrangement.

(6) Failure to assign interests under a qualified cost sharing arrangement.

(7) Form of consideration.

(i) Lump sum payments.
(ii) Installment payments.

(iii) Royalties.
(8) Examples.

(h) Character of payments made pursuant to a qualified cost sharing arrangement.

(1) In general.
(2) Examples.

(i) Accounting requirements.
(j) Administrative requirements.

(1) In general.
(2) Documentation.

(i) Requirements.
(ii) Coordination with penalty regulation.

(3) Reporting requirements.
(k) Effective date.

(l) Transition rule.

§ 1.482-8 Examples of the best method rule.

- (a) In general.
- (b) Examples.

[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]

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

(a) *In general*—(1) *Purpose and scope.* The purpose of section 482 is to ensure that taxpayers clearly reflect income attributable to controlled transactions, and to prevent the avoidance of taxes with respect to such transactions. Section 482 places a controlled taxpayer on a tax parity with an uncontrolled taxpayer by determining the true taxable income of the controlled taxpayer. This § 1.482-1 sets forth general principles and guidelines to be followed under section 482. Section 1.482-2 provides rules for the determination of the true