

(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) Methods.
 - (ii) Selection of category of method applicable to transaction.
 - (iii) Coordination of methods applicable to certain intangible development arrangements.
- (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) [Reserved]

(ii) Allocation based on taxpayer's actual transactions.

(A) In general.

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- (B) [Reserved]
- (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) Cost sharing arrangement.
- (f) Effective/applicability Date.
- (1) In general.
- (2) Election to apply paragraph (b) to earlier taxable years.

§ 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.

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- (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) Cost sharing arrangements.
 - (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) Coordination with rules governing cost sharing arrangements.
 - (h) Effective/applicability date.
 - (1) In general.
 - (2) Election to apply regulation to earlier taxable years.

§ 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.

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- (D) Other bases for measuring anticipated benefits.
- (E) Examples.
- (iii) Projections used to estimate benefits.
- (A) In general.
- (B) Examples.
- (f) Changes in participation under a CSA.
- (1) In general.
- (2) Controlled transfer of interests.
- (3) Capability variation.
- (4) Arm's length consideration for a change in participation.
- (5) Examples.
- (g) Supplemental guidance on methods applicable to PCTs.
- (1) In general.
- (2) Best method analysis applicable for evaluation of a PCT pursuant to a CSA.
- (i) In general.
- (ii) Consistency with upfront contractual terms and risk allocation—the investor model.
- (A) In general.
- (B) Example.
- (iii) Consistency of evaluation with realistic alternatives.
- (A) In general.
- (B) Examples.
- (iv) Aggregation of transactions.
- (v) Discount rate.
- (A) In general.
- (B) Considerations in best method analysis of discount rate.
- (1) Discount rate variation between realistic alternatives.
- (2) [Reserved]
- (3) Discount rate variation between forms of payment.
- (4) Post-tax rate.
- (C) Example.
- (vi) Financial projections.
- (vii) Accounting principles.
- (A) In general.
- (B) Examples.
- (viii) Valuations of subsequent PCTs.
- (A) Date of subsequent PCT.
- (B) Best method analysis for subsequent PCT.
- (ix) Arm's length range.
- (A) In general.
- (B) Methods based on two or more input parameters.
- (C) Variable input parameters.
- (D) Determination of arm's length PCT Payment.
- (1) No variable input parameters.
- (2) One variable input parameter.
- (3) More than one variable input parameter.
- (E) Adjustments.
- (x) Valuation undertaken on a pre-tax basis.
- (3) Comparable uncontrolled transaction method.
- (4) Income method.
- (i) In general.
- (A) Equating cost sharing and licensing alternatives.
- (B) Cost sharing alternative.
- (C) Licensing alternative.
- (D) Only one controlled participant with nonroutine platform contributions.
- (E) Income method payment forms.
- (F) Discount rates appropriate to cost sharing and licensing alternatives.
- (G) The effect of taxation on determining the arm's length amount.
- (ii) Evaluation of PCT Payor's cost sharing alternative.
- (iii) Evaluation of PCT Payor's licensing alternative.
- (A) Evaluation based on CUT.
- (B) Evaluation based on CPM.
- (iv) Lump sum payment form.
- (v) [Reserved]
- (vi) Best method analysis considerations.
- (A) Coordination with § 1.482-1(c).
- (B) Assumptions Concerning Tax Rates.
- (C) Coordination with § 1.482-4(c)(2).
- (D) Coordination with § 1.482-5(c).
- (E) Certain Circumstances Concerning PCT Payor.
- (F) Discount rates.
- (1) Reflection of similar risk profiles of cost sharing alternative and licensing alternative.
- (2) [Reserved]
- (vii) Routine platform and operating contributions.
- (viii) Examples.
- (5) Acquisition Price Method.
- (i) In general.
- (ii) Determination of arm's length charge.
- (iii) Adjusted acquisition price.
- (iv) Best method analysis considerations.
- (v) Example.
- (6) Market capitalization method.
- (i) In general.
- (ii) Determination of arm's length charge.
- (iii) Average market capitalization.
- (iv) Adjusted average market capitalization.
- (v) Best method analysis considerations.
- (vi) Examples.
- (7) Residual profit split method.
- (i) In general.
- (ii) Appropriate share of profits and losses.
- (iii) Profit split.
- (A) In general.
- (B) Determine nonroutine residual divisional profit or loss.
- (C) Allocate nonroutine residual divisional profit or loss.
- (1) In general.
- (2) Relative value determination.
- (3) Determination of PCT Payments.
- (4) Routine platform and operating contributions.
- (iv) Best method analysis considerations.
- (A) In general.
- (B) Comparability.
- (C) Data and assumptions.
- (D) Other factors affecting reliability.

- (v) Examples.
- (8) Unspecified methods.
- (h) Form of payment rules.
 - (1) CST Payments.
 - (2) PCT Payments.
 - (i) In general.
 - (ii) No PCT Payor stock.
 - (iii) Specified form of payment.
 - (A) In general.
 - (B) Contingent payments.
 - (C) Examples.
 - (iv) Conversion from fixed to contingent form of payment.
 - (3) Coordination of best method rule and form of payment.
 - (i) Allocations by the Commissioner in connection with a CSA.
 - (1) In general.
 - (2) CST allocations.
 - (i) In general.
 - (ii) Adjustments to improve the reliability of projections used to estimate RAB shares.
 - (A) Unreliable projections.
 - (B) Foreign-to-foreign adjustments.
 - (C) Correlative adjustments to PCTs.
 - (D) Examples.
 - (iii) Timing of CST allocations.
 - (3) PCT allocations.
 - (4) Allocations regarding changes in participation under a CSA.
 - (5) Allocations when CSTs are consistently and materially disproportionate to RAB shares.
 - (6) Periodic adjustments.
 - (i) In general.
 - (ii) PRRR.
 - (iii) AERR.
 - (A) In general.
 - (B) PVTP.
 - (C) PVI.
 - (iv) ADR.
 - (A) In general.
 - (B) Publicly traded companies.
 - (C) Publicly traded.
 - (D) PCT Payor WACC.
 - (E) Generally accepted accounting principles.
 - (v) Determination of periodic adjustments.
 - (A) In general.
 - (B) Adjusted RPSM as of Determination Date.
 - (vi) Exceptions to periodic adjustments.
 - (A) Controlled participants establish periodic adjustment not warranted.
 - (1) Transactions involving the same platform contribution as in the Trigger PCT.
 - (2) Results not reasonably anticipated.
 - (3) Reduced AERR does not cause Periodic Trigger.
 - (4) Increased AERR does not cause Periodic Trigger.
 - (B) Circumstances in which Periodic Trigger deemed not to occur.
 - (1) 10-year period.
 - (2) 5-year period.
 - (vii) Examples.
 - (j) Definitions and special rules.

- (1) Definitions.
 - (i) In general.
 - (ii) Examples.
 - (2) Special rules.
 - (i) Consolidated group.
 - (ii) Trade or business.
 - (iii) Partnership.
 - (3) Character.
 - (i) CST Payments.
 - (ii) PCT Payments.
 - (iii) Examples.
 - (k) CSA administrative requirements.
 - (1) CSA contractual requirements.
 - (i) In general.
 - (ii) Contractual provisions.
 - (iii) Meaning of contemporaneous.
 - (A) In general.
 - (B) Example.
 - (iv) Interpretation of contractual provisions.
 - (A) In general.
 - (B) Examples.
 - (2) CSA documentation requirements.
 - (i) In general.
 - (ii) Additional CSA documentation requirements.
 - (iii) Coordination rules and production of documents.
 - (A) Coordination with penalty regulations.
 - (B) Production of documentation.
 - (3) CSA accounting requirements.
 - (i) In general.
 - (ii) Reliance on financial accounting.
 - (4) CSA reporting requirements.
 - (i) CSA Statement.
 - (ii) Content of CSA Statement.
 - (iii) Time for filing CSA Statement.
 - (A) 90-day rule.
 - (B) Annual return requirement.
 - (1) In general.
 - (2) Special filing rule for annual return requirement.
 - (iv) Examples.
 - (1) Effective/applicability date.
 - (m) Transition rule.
 - (1) In general.
 - (2) Transitional modification of applicable provisions.
 - (3) Special rule for certain periodic adjustments.
- § 1.482-8 *Examples of the best method rule.*
- (a) Introduction.
 - (b) Examples.
 - (c) Effective/applicability date.
- § 1.482-9 *Methods to determine taxable income in connection with a controlled services transaction.*
- (a) In general.
 - (b) Services cost method.
 - (1) In general.
 - (2) Eligibility for the services cost method.
 - (3) Covered services.
 - (i) Specified covered services.
 - (ii) Low margin covered services.

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(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; T.D. 9568, 76 FR 80087, Dec. 22, 2011; T.D. 9738, 80 FR 55540, Sept. 16, 2015]

§ 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 section sets forth general principles and guidelines to be followed under section 482. Section 1.482-2 provides rules for the determination of the true taxable income of controlled taxpayers in specific situations, including controlled transactions involving loans or advances or the use of tangible property. Sections 1.482-3 through 1.482-6 provide rules for the determination of the true taxable income of controlled taxpayers in cases involving the transfer of property. Section 1.482-7T sets forth the cost sharing provisions applicable to taxable years beginning on or after January 5, 2009. Section 1.482-8 provides examples illustrating the application of the best method rule. Finally, § 1.482-9 provides rules for the determination of the true taxable income of controlled taxpayers in cases involving the performance of services.

(2) *Authority to make allocations*. The district director may make allocations between or among the members of a controlled group if a controlled taxpayer has not reported its true taxable income. In such case, the district director may allocate income, deductions, credits, allowances, basis, or any other item or element affecting taxable income (referred to as allocations). The appropriate allocation may take the form of an increase or decrease in any relevant amount.

(3) *Taxpayer's use of section 482*. If necessary to reflect an arm's length result, a controlled taxpayer may report on a timely filed U.S. income tax return (including extensions) the results of its controlled transactions based upon prices different from those actually charged. Except as provided in this paragraph, section 482 grants no other right to a controlled taxpayer to apply the provisions of section 482 at will or to compel the district director to apply such provisions. Therefore, no untimely or amended returns will be permitted to decrease taxable income based on allocations or other adjustments with respect to controlled transactions. See § 1.6662-6T(a)(2) or successor regulations.

(b) *Arm's length standard*—(1) *In general*. In determining the true taxable income of a controlled taxpayer, the standard to be applied in every case is that of a taxpayer dealing at arm's length with an uncontrolled taxpayer. A controlled transaction meets the arm's length standard if the results of the transaction are consistent with the results that would have been realized if uncontrolled taxpayers had engaged in the same transaction under the same circumstances (arm's length result). However, because identical transactions can rarely be located, whether a transaction produces an arm's length result generally will be determined by reference to the results of comparable transactions under comparable circumstances. See § 1.482-1(d)(2) (Standard of comparability). Evaluation of whether a controlled transaction produces an arm's length result is made pursuant to a method selected under the best method rule described in § 1.482-1(c).

(2) *Arm's length methods*—(i) *Methods*. Sections 1.482-2 through 1.482-7 and 1.482-9 provide specific methods to be used to evaluate whether transactions between or among members of the controlled group satisfy the arm's length standard, and if they do not, to determine the arm's length result. This section provides general principles applicable in determining arm's length results of such controlled transactions, but do not provide methods, for which reference must be made to those other sections in accordance with paragraphs