

operating under similar conditions would not be willing to pay, or would not itself undertake. Consistent with the general approach in proposed § 1.482–9(l)(3)(i), the determination of whether a benefit is indirect or remote focuses on the recipient.

Under proposed § 1.482–9(l)(3)(iii), an activity that is duplicative of an activity performed by another controlled taxpayer generally will not be considered to provide a benefit unless it yields an identifiable, additional benefit to one or more members of the controlled group.

iii. Shareholder Activities—§ 1.482–9(l)(3)(iv). Substantial controversy has arisen under the existing regulations concerning whether activities performed by an owner-member in a controlled group may be classified as shareholder or stewardship activities that benefit the owner-member that renders such services and not other controlled parties. Stewardship or shareholder activities are activities performed by reason of or on account of the renderer's status as a shareholder or as an investor of capital. The existing regulations do not provide specific guidance with respect to these issues.

Proposed § 1.482–9(l)(3)(iv) provides that an activity whose primary benefit is to protect the renderer's capital investment in one or more members of the controlled group, or an activity relating primarily to compliance by the renderer with reporting, legal, or regulatory requirements applicable specifically to the renderer, will not be considered to provide a benefit to another member of the controlled group. The proposed regulations further provide that activities in the nature of day-to-day management generally do not relate to the protection of the renderer's capital investment, and that activities performed in connection with a corporate reorganization (including payments to unrelated service providers) may be considered to provide a benefit to one or more controlled taxpayers.

In the view of the Treasury Department and the IRS, the relatively narrow definition of shareholder activities in the proposed regulations reflects the arm's length standard and is consistent with particular international standards in this area. The Treasury Department and the IRS recognize that there are a wide range of activities and factual scenarios within a multinational group to which this guidance will apply. For example, if an activity is performed in order to comply with legal requirements applicable to shareholders, or in order to preserve or safeguard the controlled taxpayer's

equity investment in a subsidiary, such an activity should be properly viewed as a shareholder activity. It may be appropriate to conclude that other activities also provide no benefit to other members of the controlled group, but such conclusion would be based on a detailed analysis of the facts and circumstances.

iv. Passive Association—§ 1.482–9(l)(3)(v). Proposed § 1.482–9(l)(3)(v) provides that a member of a controlled group that obtains a benefit solely on account of its status as a member of the group (for example, by obtaining favorable commercial terms from an uncontrolled party by reason of its membership in the controlled group) is generally not considered to receive a benefit. A controlled taxpayer's status as a member of a controlled group may, however, be considered in evaluating comparability between controlled and uncontrolled transactions.

d. Examples—§ 1.482–9(l)(4). Proposed § 1.482–9(l)(4) provides a significant number of examples to illustrate the rules of § 1.482–9(l). Like all examples in the proposed regulations, these examples are limited to an application of the substantive rules of the proposed regulations to the specific facts contained therein.

13. Coordination With Other Transfer Pricing Rules—§ 1.482–9(m)

Proposed § 1.482–9(m) provides rules to coordinate the rules applicable to services with rules applicable to other categories of transactions under section 482. Generally, the section 482 regulations set forth specific transfer pricing methods for evaluating the results of controlled transactions under the arm's length standard. Certain methods apply only to specific types of transactions, while other methods apply more generally. Selection of a method for a particular type of transaction is subject to the best method rule of existing § 1.482–1(c)(1), which states that the method selected should provide the most reliable measure of an arm's length result. The proposed regulations include coordination provisions that provide guidance on selection of an appropriate transfer pricing method when a controlled services transaction is combined with or has elements of another type of transaction. The proposed regulations provide examples that illustrate the application of these rules.

a. Services Transactions That Include Other Types of Transactions—§ 1.482–9(m)(1). A transaction structured as a services transaction may also include elements comprising a different type of transaction. In the case of such an

integrated transaction, proposed § 1.482–9(m)(1) provides that whether the integrated transaction may be evaluated by use of the transfer pricing methods in proposed § 1.482–9 or whether one or more elements of the transaction should be evaluated separately under the methods in other section 482 regulations depends on which approach will provide the most reliable measure of an arm's length result. In cases where the non-services element of an integrated transaction may be adequately accounted for in evaluating the comparability of the controlled transaction to the uncontrolled comparables, the integrated transaction may be adequately evaluated under a single method provided under § 1.482–9.

b. Services Transactions That Effect a Transfer of Intangible Property—§ 1.482–9(m)(2). A transaction structured as a services transaction may result in a transfer of intangible property, may have an effect similar to the transfer of intangible property, or may include an element that constitutes the transfer of intangible property. In such cases, proposed § 1.482–9(m)(2) provides that if the element that relates to the transfer of intangible property is material to the evaluation of the transaction, the arm's length result with respect to such element must be either determined under or corroborated by reference to a method under existing § 1.482–4. The Treasury Department and the IRS believe that it is critical that economically similar transactions, in particular transactions that effect the transfer of intangible property, be evaluated consistently under the transfer pricing regulations.

c. Services Subject to a Qualified Cost Sharing Arrangement—§ 1.482–9(m)(3). Proposed § 1.482–9(m)(3) provides that services provided by a controlled participant under a qualified cost sharing arrangement are subject to existing § 1.482–7. The Treasury Department and the IRS are reviewing the current regulatory guidance related to qualified cost sharing arrangements, and intend to issue proposed regulations in the near term.

d. Other Types of Transaction That Include a Services Transaction—§ 1.482–9(m)(4). A transaction structured as a transaction other than a services transaction may also include elements comprising a services transaction. In the case of such an integrated transaction, proposed § 1.482–9(m)(4) provides rules to determine the manner in which such integrated transactions should be evaluated that are similar to the rules in proposed § 1.482–9(m)(1) provided for