

necessary. Proposed amendments to these provisions are set forth in this document. In addition, the Treasury Department and the IRS are considering the extent to which changes to § 1.861-8(e)(4), which provides guidance regarding expenses attributable to dividends received and which refers to the existing services regulations, may be appropriate to improve the coordination of that regulation with the transfer pricing regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f), this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic or written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The Treasury Department and the IRS specifically request comments on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for January 14, 2004, at 10 a.m., in the auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written

comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by December 23, 2003. A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these proposed regulations are J. Peter Luedtke and Helen Hong-George of the Office of Chief Counsel (International). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 31 are proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *
Section 1.482-9 also issued under 26 U.S.C. 482. * * *

Par. 2. Section 1.482-0 is amended by:

1. Revising the section heading.
 2. Removing the entries for § 1.482-2(b) and adding a new entry in its place.
 3. Revising the entries for § 1.482-4(f)(3), (f)(4) and (f)(5) and adding new entries for § 1.482-4(f)(6).
 4. Adding new entries for §§ 1.482-6(c)(3)(i)(B)(1) and (2) and 1.482-9.
- The additions and revisions read as follows:

§ 1.482-0 Outline of regulations under section 482.

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

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- (b) Rendering of services.

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

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- (f) * * *
- (3) Ownership of intangible property.
- (i) Identification of owner.
- (A) In general.
- (B) Cost sharing arrangements.
- (ii) Examples.
- (4) Contribution to the value of an intangible owned by another.
- (i) In general.
- (ii) Examples.
- (5) Consideration not artificially limited.
- (6) Lump-sum payments.
- (i) In general.
- (ii) Exceptions.
- (iii) Example.

§ 1.482-6 Profit split method.

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- (c) * * *
- (3) * * *
- (i) In general. * * *
- (B) Allocate residual profit.
- (1) Nonroutine contributions generally.
- (2) Nonroutine contributions of intangible property.

§ 1.482-9 Methods to determine taxable income in connection with a controlled services transaction.

- (a) In general.
- (b) Comparable uncontrolled services 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 the price of a comparable uncontrolled services transaction.
- (i) In general.
- (ii) Example.
- (c) Gross services margin method.
- (1) In general.
- (2) Determination of arm's length price.
- (i) In general.
- (ii) Related uncontrolled transaction.
- (iii) Applicable uncontrolled price.
- (iv) Appropriate gross services profit.
- (v) 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) Buy-sell distributor.
- (iii) Data and assumptions.
- (A) In general.
- (B) Consistency in accounting.
- (4) Examples.
- (d) Cost of services plus method.
- (1) In general.
- (2) Determination of arm's length price.