

transactions, consistent with the parties' course of conduct in the particular case.

(v) * * * See § 1.482-9(m).

(f) * * *
(2) * * *
(iii) * * *

(B) *Circumstances warranting consideration of multiple year data.* The extent to which it is appropriate to consider multiple year data depends on the method being applied and the issue being addressed. Circumstances that may warrant consideration of data from multiple years include the extent to which complete and accurate data is available for the taxable year under review, the effect of business cycles in the controlled taxpayer's industry, or the effects of life cycles of the product or intangible being examined. Data from one or more years before or after the taxable year under review must ordinarily be considered for purposes of applying the provisions of paragraph (d)(3)(iii) of this section (Risk), paragraph (d)(4)(i) of this section (Market share strategy), § 1.482-4(f)(2) (Periodic adjustments), § 1.482-5 (Comparable profits method), § 1.482-9(e) (Comparable profits method for services), § 1.482-9(f) (Simplified cost-based method for services), and § 1.482-9(i) (Contingent-payment contractual terms for services). On the other hand, multiple year data ordinarily will not be considered for purposes of applying the comparable uncontrolled price method of § 1.482-3(b) or the comparable uncontrolled services price method of § 1.482-9(b) (except to the extent that risk or market share strategy issues are present).

(g) * * *
(4) *Setoffs*—(i) *In general.* If an allocation is made under section 482 with respect to a transaction between controlled taxpayers, the Commissioner will take into account the effect of any other non-arm's length transaction between the same controlled taxpayers in the same taxable year which will result in a setoff against the original section 482 allocation. Such setoff, however, will be taken into account only if the requirements of paragraph (g)(4)(ii) of this section are satisfied. If the effect of the setoff is to change the characterization or source of the income or deductions, or otherwise distort taxable income, in such a manner as to affect the U.S. tax liability of any member, adjustments will be made to reflect the correct amount of each category of income or deductions. For purposes of this setoff provision, the

term arm's length refers to the amount defined in paragraph (b) of this section (Arm's length standard), without regard to the rules in § 1.482-2(a) that treat certain interest rates as arm's length rates of interest.

(iii) *Examples.* * * *

Example 1. P, a U.S. corporation, renders construction services to S, its foreign subsidiary in Country Y, in connection with the construction of S's factory. An arm's length charge for such services determined under § 1.482-9 would be \$100,000. * * *

(i) *Definitions.* The definitions set forth in paragraphs (i)(1) through (i)(10) of this section apply to this §§ 1.482-1 through 1.482-9.

Par. 4. Section 1.482-2(b) is revised to read as follows:

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

(b) *Rendering of services.* For rules governing allocations under section 482 to reflect an arm's length charge for controlled transactions involving the rendering of services, see § 1.482-9.

Par. 5. Section 1.482-4 is amended by:

1. Redesignating paragraphs (f)(4) and (f)(5) as paragraphs (f)(5) and (f)(6), respectively.

2. Revising paragraph (f)(3) and adding new paragraph (f)(4). The revisions and additions read as follows.

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

(f) * * *
(3) *Ownership of intangible property*—(i) *Identification of owner*—(A) *In general.* The legal owner of an intangible pursuant to the intellectual property law of the relevant jurisdiction, or the holder of rights constituting an intangible pursuant to contractual terms (such as the terms of a license) or other legal provision, will be considered the sole owner of the respective intangible for purposes of this section unless such ownership is inconsistent with the economic substance of the underlying transactions. See § 1.482-1(d)(3)(ii)(B) (Identifying contractual terms). If no owner of the respective intangible is identified under the intellectual property law of the relevant jurisdiction, or pursuant to contractual terms (including terms imputed pursuant to § 1.482-1(d)(3)(ii)(B)) or other legal provision, then the controlled taxpayer

who has control of the intangible, based on all the facts and circumstances, will be considered the sole owner of the intangible for purposes of this section.

(B) *Cost sharing arrangements.* The rule in paragraph (f)(3)(i)(A) of this section shall apply to interests in covered intangibles, as defined in § 1.482-7(b)(4)(iv), only as provided in § 1.482-7 (Sharing of costs).

(ii) *Examples.* The principles of this paragraph (f)(3) are illustrated by the following examples:

Example 1. FP, a foreign corporation, is the registered holder of the AA trademark in the United States. FP licenses to a U.S. subsidiary, USSub, the exclusive rights to manufacture and market products in the United States under the AA trademark. FP is the owner of the trademark pursuant to intellectual property law. USSub is the owner of the license pursuant to the contractual terms of the license, but is not the owner of the trademark. See paragraphs (b)(3) and (4) of this section (defining an intangible as, among other things, a trademark or a license).

Example 2. The facts are the same as in *Example 1.* As a result of its sales and marketing activities, USSub develops a list of several hundred creditworthy customers that regularly purchase AA trademarked products. Neither the terms of the contract between FP and USSub nor the relevant intellectual property law specify which party owns the customer list. Because USSub has knowledge of the contents of the list, and has practical control over its use and dissemination, USSub is considered the sole owner of the customer list for purposes of this paragraph (f)(3).

(4) *Contribution to the value of an intangible owned by another*—(i) *In general.* The arm's length consideration for a contribution by one controlled taxpayer that develops or enhances the value, or may be reasonably anticipated to develop or enhance the value, of an intangible owned by another controlled taxpayer shall be determined in accordance with the applicable rules under section 482. If the consideration for such a contribution is embedded within the contractual terms for a controlled transaction that involves such intangible, then ordinarily no separate allocation will be made with respect to such contribution. In such cases, pursuant to § 1.482-1(d)(3), the contribution must be accounted for in evaluating the comparability of the controlled transaction to uncontrolled comparables, and accordingly in determining the arm's length consideration in the controlled transaction.

(ii) *Examples.* The principles of this paragraph (f)(4) are illustrated by the following examples:

Example 1. A, a member of a controlled group, allows B, another member of the