

allocation is warranted would include a comparison of the compensation provided for the services with the results obtained under a method pursuant to § 1.482-9, selected and applied in accordance with the best method rule of § 1.482-1(c).

(iii) Whether an allocation is appropriate with respect to the royalty under the license agreement would be evaluated under § 1.482-1 and this section through § 1.482-6. The comparability analysis would include consideration of all relevant factors, such as the term and geographical exclusivity of USSub's license, the nature of the intangibles subject to the license, and the marketing activities required to be undertaken by both FP and USSub pursuant to the license. This comparability analysis would take into account that the compensation for the incremental activities performed by FP was provided for in the separate services agreement, rather than embedded in the royalty for the AA trademark. If it is not possible to identify uncontrolled transactions that incorporate a similar range of interrelated elements and there are nonroutine contributions by each of FP and USSub, then the most reliable measure of the arm's length royalty for the AA trademark may be the residual profit split method. The analysis would take into account routine and nonroutine contributions by USSub and FP in order to determine an appropriate allocation of the combined operating profits from the sale of the AA trademarked merchandise and related activities.

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**Par. 6.** Section 1.482-6 is amended by:

1. Revising the third sentence in paragraph (c)(2)(ii)(B)(1), the first sentence in paragraph (c)(2)(ii)(D), the last sentence in paragraph (c)(3)(i)(A) and the first sentence in paragraph (c)(3)(ii)(D).

2. Revising paragraph (c)(3)(i)(B).  
The revisions read as follows:

**§ 1.482-6 Profit split method.**

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(ii) \* \* \*

(B) \* \* \* (1) \* \* \* Although all of the factors described in § 1.482-1(d)(3) must be considered, comparability under this method is particularly dependent on the considerations described under the comparable profits method in § 1.482-5(c)(2) or § 1.482-9(e)(2)(iii), because this method is based on a comparison of the operating profit of the controlled and uncontrolled taxpayers. \* \* \*

\* \* \* \* \*

(D) *Other factors affecting reliability.* Like the methods described in §§ 1.482-3, 1.482-4, 1.482-5 and 1.482-9, the comparable profit split relies exclusively on external market benchmarks. \* \* \*

\* \* \* \* \*

(3) \* \* \* (i) \* \* \*

(A) \* \* \* Market returns for the routine contributions should be determined by reference to the returns achieved by uncontrolled taxpayers engaged in similar activities, consistent with the methods described in §§ 1.482-3, 1.482-4, 1.482-5 and 1.482-9.

(B) *Allocate residual profit—(1) Nonroutine contributions generally.* The allocation of income to the controlled taxpayer's routine contributions will not reflect profits attributable to each controlled taxpayer's contributions to the relevant business activity that are not routine (nonroutine contributions). A nonroutine contribution is a contribution that cannot be fully accounted for by reference to market returns, or that is so interrelated with other transactions that it cannot be reliably evaluated on a separate basis. Thus, in cases where such nonroutine contributions are present there normally will be an unallocated residual profit after the allocation of income described in paragraph (c)(3)(i)(A) of this section. Under this second step, the residual profit generally should be divided among the controlled taxpayers based upon the relative value of their nonroutine contributions to the relevant business activity. The relative value of the nonroutine contributions of each taxpayer should be measured in a manner that most reliably reflects each nonroutine contribution made to the controlled transaction and each controlled taxpayer's role in the nonroutine contributions. If the nonroutine contribution by one of the controlled taxpayers is also used in other business activities (such as transactions with other controlled taxpayers), an appropriate allocation of the value of the nonroutine contribution must be made among all the business activities in which it is used.

(2) *Nonroutine contributions of intangible property.* In many cases, nonroutine contributions of a taxpayer to the relevant business activity may be contributions of intangible property. For purposes of paragraph (c)(3)(i)(B)(1) of this section, the relative value of nonroutine intangible property contributed by taxpayers may be measured by external market benchmarks that reflect the fair market value of such intangible property. Alternatively, the relative value of nonroutine intangible property contributions may be estimated by the capitalized cost of developing the intangible property and all related improvements and updates, less an appropriate amount of amortization based on the useful life of each intangible. Finally, if the intangible

development expenditures of the parties are relatively constant over time and the useful life of the intangible property contributed by all parties is approximately the same, the amount of actual expenditures in recent years may be used to estimate the relative value of nonroutine intangible property contributions.

(D) *Other factors affecting reliability.* Like the methods described in §§ 1.482-3, 1.482-4, 1.482-5 and 1.482-9, the first step of the residual profit split relies exclusively on external market benchmarks. \* \* \*

\* \* \* \* \*

**Par. 7.** A new § 1.482-9 is added to read as follows:

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

(a) *In general.* The arm's length amount charged in a controlled services transaction must be determined under one of the methods provided for in this section. Each method must be applied in accordance with the provisions of § 1.482-1, including the best method rule of § 1.482-1(c), the comparability analysis of § 1.482-1(d), and the arm's length range of § 1.482-1(e), except as those provisions are modified in this section. The methods are—

- (1) The comparable uncontrolled services price method, described in paragraph (b) of this section;
- (2) The gross services margin method, described in paragraph (c) of this section;
- (3) The cost of services plus method, described in paragraph (d) of this section;
- (4) The comparable profits method, described in § 1.482-5 and in paragraph (e) of this section;
- (5) The simplified cost-based method for certain services, described in paragraph (f) of this section;
- (6) The profit split method, described in § 1.482-6 and in paragraph (g) of this section; and
- (7) Unspecified methods, described in paragraph (h) of this section.

(b) *Comparable uncontrolled services price method—(1) In general.* The comparable uncontrolled services price method evaluates whether the amount charged in a controlled services transaction is arm's length by reference to the amount charged in a comparable uncontrolled services transaction. The comparable uncontrolled services price method is ordinarily used where the controlled services either are identical to or have a high degree of similarity to the services in the uncontrolled transaction.