

transaction may not be determined under the simplified cost-based method where the renderer's valuable or unique intangible property, or the renderer's particular resources or capabilities (such as the knowledge of and ability to take advantage of particularly advantageous situations or circumstances), contribute significantly to the value of the services and the renderer's costs associated with the services do not include costs with respect to such use of its intangible property or resources that are significant.

(iv) *Non-services transactions included in integrated transactions.* The arm's length charge in a controlled services transaction may not be determined under the simplified cost-based method to the extent a transaction other than a services transaction (such as a transfer of tangible property) accounts for a more than *de minimis* amount of value in a transaction structured as a controlled services transaction. In such cases, the arm's length charge for only the services element of the integrated transaction may be determined under the simplified cost-based method.

(v) *Certain transactions.* The arm's length charge may not be determined under the simplified cost-based method in any of the following categories of transactions:

- (A) Manufacturing;
- (B) Production;
- (C) Extraction;
- (D) Construction;
- (E) Reselling, distribution, acting as a sales or purchasing agent, or acting under a commission or other similar arrangement;
- (F) Research, development, or experimentation;
- (G) Engineering or scientific;
- (H) Financial transactions, including guarantees; and
- (I) Insurance or reinsurance.

(5) *Examples.* The following examples illustrate the operation of this paragraph (f), including the limitations of paragraph (f)(2) of this section on allocations by the Commissioner. For purposes of illustrating the operation and scope of such limitations, the examples assume a determination of an arm's length markup on total services costs and, where appropriate, the interquartile range and median with respect to the arm's length markup on total costs. In each example, assume that S is a wholly owned subsidiary of P; that the conditions described in paragraph (f)(3) of this section are satisfied; and that the relevant controlled services are not described in paragraph (f)(4) of this section.

*Example 1.* Company P renders accounting services to Company S. Company P uses the simplified cost-based method for the accounting services, and determines the amount charged as Company P's total cost of rendering the services, with no markup. Based on an application of the section 482 regulations without regard to this paragraph (f), the Commissioner determines that the interquartile range of arm's length markups on total services costs is between 3% and 6%, and the median is 4%. Because the arm's length markup on total services costs (4%) exceeds the markup on total services costs applied by the taxpayer (0%) by fewer than the applicable number of percentage points (6), the Commissioner may not make an allocation.

*Example 2.* Company P performs logistics-coordination services for its subsidiaries, including Company S. Company P uses the simplified cost-based method for the logistics services, and determines the amount charged as Company P's total cost of rendering the services, plus a markup of 5%. Based on an application of the section 482 regulations without regard to this paragraph (f), the Commissioner determines that the interquartile range of arm's length markups on total services costs is between 6% and 13%, and the median is 9%. Because the arm's length markup on total services costs (9%) exceeds the markup on total services costs applied by the taxpayer (5%) by more than the applicable number of percentage points (3.5), the limitations imposed by this rule on the Commissioner's authority to make an allocation do not apply. With respect to the determination and application of the arm's length range, see § 1.482-1(e).

*Example 3.* Company P renders administrative services to its subsidiaries, including Company S. Company P uses the simplified cost-based method for the administrative services, as it has for the preceding two years, and determines for all three years the amount charged as Company P's total cost of rendering the services, plus a markup of 5%. Based on an application of the section 482 regulations without regard to this paragraph (f), the Commissioner identifies uncontrolled comparables in the same industry segment that perform similar functions and bear similar risks as Company P. These transactions meet the comparability criteria under the comparable profits method of paragraph (e) of this section and § 1.482-5. An analysis of the information available on the comparable parties shows that the ratio of operating profit to total services costs is the most appropriate profit level indicator, and that this ratio is relatively stable where at least three years are included in the average. The information available is not sufficiently complete to conclude that it is likely that all material differences between Company P and the uncontrolled comparables have been identified. Consequently, the Commissioner determines an arm's length range based on the results of all the uncontrolled comparables that achieve a similar level of comparability and reliability, and the Commissioner adjusts that range by applying a valid statistical method to the results of all the uncontrolled comparables. The Commissioner determines

an interquartile range of arm's length markups on total services costs, which is between 6% and 13%, with a median of 9%. Because the arm's length markup on total services costs (9%) exceeds the average three-year markup on total services costs applied by the taxpayer (5%) by more than the applicable number of percentage points (3.5), the limitations imposed by this rule on the Commissioner's authority to make an allocation do not apply. With respect to the determination and application of the arm's length range, see § 1.482-1(e).

*Example 4.* Company P renders administrative services to Company S. Company P uses the simplified cost-based method for the administrative services, and determines the amount charged as Company P's total cost of rendering the services, plus a markup of 6%. Based on an application of the section 482 regulations without regard to this paragraph (f), the Commissioner determines that the interquartile range of arm's length markups on total services costs is between 3% and 5%, and the median is 4.5%. Because the arm's length markup on total services costs (4.5%) is less than the markup applied by the taxpayer (6%), the limitations imposed by this rule on the Commissioner's authority to make an allocation do not apply.

*Example 5.* Company P provides administrative services to Company S. P uses the simplified cost-based method for the administrative services, and determines the amount charged as Company P's total cost of providing the services, minus a "markdown" of 1%. Because the markup on total services costs applied by the taxpayer in the controlled transaction (–1%) is less than zero, the limitations imposed by this rule on the Commissioner's authority to make an allocation do not apply.

*Example 6.* Company P performs custodial and maintenance services for certain office properties owned by Company S. Company P uses the simplified cost-based method for the administrative services, and determines the amount charged as Company P's total cost of providing the services plus a markup of 8%. The Commissioner identifies uncontrolled comparables that perform a similar range of custodial and maintenance services for uncontrolled parties and charge those parties an annual fee based on the total square footage of the property. These transactions meet the comparability criteria under the comparable uncontrolled services price method of paragraph (b) of this section. Based on reliable accounting information, the Commissioner determines that it is possible to restate the price for the maintenance and custodial services charged to uncontrolled parties as representing a markup on total services costs of 4%. Because the markup on total services costs charged by the taxpayer on the controlled transactions exceeds the markup on total services costs determined by an application of the section 482 regulations without regard to this paragraph (f), the limitations imposed by this rule on the Commissioner's authority to make an allocation do not apply.

*Example 7.* Company P performs logistics-coordination services for its subsidiaries, including Company S. Company P uses the