

visit Company Y on a semiannual basis in order to review the subsidiary's adherence to internal operating procedures issued by Company X and its compliance with U.S. anti-bribery laws, which apply to Company Y on account of its ownership by a U.S. corporation. Because the reviews by Company X's audit staff relate primarily to Company X's investment in Company Y by ensuring that Company X and its subsidiaries are in compliance with Company X's internal operating procedures and Country A laws, the visits are shareholder activities and therefore Company Y is not considered to obtain a benefit from the visits.

Example 10. Shareholder activities. Country B recently enacted legislation that changed the foreign currency exchange controls applicable to foreign shareholders of Country B corporations. Company X concludes that it may benefit from changing the capital structure of Company Y, thus taking advantage of the new foreign currency exchange control laws in Country B. Company X engages an investment banking firm and a law firm to review the Country B legislation and to propose possible changes to the capital structure of Company Y. Because Company X retains and pays the firms in order to facilitate Company Y's ability to pay dividends and other amounts, these expenses relate primarily to Company X's role as an investor of capital and therefore Company Y is not considered to obtain a benefit from the activities.

Example 11. Shareholder activities. The facts are the same as in *Example 10*, except that Company Y bears the full cost of retaining the firms to evaluate the new foreign currency control laws in Country B and to make appropriate changes to its stock ownership by Company X. Company X is considered to obtain a benefit from the rendering by Company Y of these activities, which would be shareholder activities if conducted by Company X (see *Example 10*).

Example 12. Shareholder activities. The facts are the same as in *Example 10*, except that the new laws relate solely to corporate governance in Country B, and Company X retains the law firm and investment banking firm in order to evaluate whether restructuring would increase Company Y's profitability, reduce the number of legal entities in Country B, and increase Company Y's ability to introduce new products more quickly in Country B. Because Company X retained the law firm and the investment banking firm solely to enhance Company Y's profitability and the efficiency of its operations, the activities do not relate primarily to Company X's role as a shareholder or investor of capital and therefore Company Y is considered to obtain.

Example 13. Shareholder activities. Company X establishes detailed personnel policies for its subsidiaries, including Company Y. Company X also reviews and approves the performance appraisals of Company Y's executives, monitors levels of compensation paid to all Company Y personnel, and is involved in hiring and firing decisions regarding the senior executives of Company Y. Because this personnel-related activity by Company X involves day-to-day management of Company

Y, it does not relate primarily to Company X's role as an investor of capital or a shareholder of Company Y, and therefore Company Y is considered to obtain a benefit from the activity.

Example 14. Shareholder activities. Each year, Company X conducts a two-day retreat for its senior executives. The purpose of the retreat is to refine the long-term business strategy of Company X and its subsidiaries, including Company Y, and to produce a confidential strategy statement. The strategy statement identifies several potential growth initiatives for Company X and its subsidiaries and lists general means of increasing the profitability of the company as a whole. The strategy statement is made available without charge to Company Y and the other subsidiaries of Company X. Company Y independently evaluates whether to implement some, all, or none of the initiatives contained in the strategy statement. Because the preparation of the strategy statement does not relate primarily to Company X's role as an investor of capital or a shareholder of Company Y, the expense of preparing the document is not a shareholder expense. In determining whether Company Y obtained a benefit from the making available of access to the strategy statement, the test is whether, based on the facts and circumstances, Company Y would be willing to pay for a similar analysis and similar recommendations, or otherwise would have undertaken a similar analysis on its own if it were an uncontrolled taxpayer operating under similar conditions as Company Y.

Example 15. Passive association/benefit. Company X is the parent corporation of a large controlled group that has been in operation in the information-technology sector for ten years. Company Y is a small corporation that was recently acquired by the Company X controlled group from local Country B owners. Several months after the acquisition of Company Y, Company Y obtained a contract to redesign and assemble the information-technology networks and systems of a large financial institution in Country B. The project was significantly larger and more complex than any other project undertaken to date by Company Y. Company Y did not use Company X's marketing intangibles to solicit the contract, and Company X had no involvement in the solicitation, negotiation, or anticipated execution of the contract. For purposes of this section, Company Y is not considered to obtain a benefit from Company X or any other member of the controlled group because the ability of Company Y to obtain the contract, or to obtain the contract on more favorable terms than would have been possible prior to its acquisition by the Company X controlled group, was due to Company Y's status as a member of the Company X controlled group and not to any specific activity by Company X or any other member of the controlled group.

Example 16. Passive association/benefit. The facts are the same as in *Example 15*, except that Company X executes a performance guarantee with respect to the contract, agreeing to assist in the project if Company Y fails to meet certain mileposts.

This performance guarantee allowed Company Y to obtain the contract on more favorable terms than otherwise would have been possible. Company Y is considered to obtain a benefit from Company X's execution of the performance guarantee.

Example 17. Passive association/benefit. The facts are the same as in *Example 15*, except that Company X began the process of negotiating the contract with the financial institution in Country B before acquiring Company Y. Once Company Y was acquired by Company X, the contract with the financial institution was entered into by Company Y. Company Y is considered to obtain a benefit from Company X's negotiation of the contract.

(m) *Coordination with transfer pricing rules for other transactions*—(1) *Services transactions that include other types of transactions.* A transaction structured as a controlled services transaction may include other elements for which a separate category or categories of methods are provided, such as a loan or advance, a rental, or a transfer of tangible or intangible property. See §§ 1.482-1(b)(2) and 1.482-2(a), (c), and (d). Whether such an integrated transaction is evaluated as a controlled services transaction under this section or whether one or more elements should be evaluated separately under other sections of the section 482 regulations depends on which approach will provide the most reliable measure of an arm's length result. Ordinarily, an integrated transaction of this type may be evaluated under this section and its separate elements need not be evaluated separately, provided that each component of the transaction may be adequately accounted for in evaluating the comparability of the controlled transaction to the uncontrolled comparables and, accordingly, in determining the arm's length result in the controlled transaction. See § 1.482-1(d)(3).

(2) *Services transactions that effect a transfer of intangible property.* A transaction structured as a controlled services transaction may in some cases result in a transfer, in whole or in part, of intangible property, or may have an effect similar to the transfer of intangible property, or may include an element that constitutes the transfer of intangible property. If such element relating to intangible property is material to the evaluation, the arm's length result for the element of the transaction that involves intangible property generally must be corroborated or determined by an analysis under § 1.482-4.

(3) *Services subject to a qualified cost sharing arrangement.* Services provided by a controlled participant under a