

qualified cost sharing arrangement are subject to § 1.482–7.

(4) *Other types of transactions that include controlled services transactions.* A transaction structured other than as a controlled services transaction may include one or more elements for which separate pricing methods are provided in this section. Whether such an integrated transaction is evaluated under another section of the section 482 regulations or whether one or more elements should be evaluated separately under this section depends on which approach will provide the most reliable measure of an arm's length result. Ordinarily, a single method may be applied to such an integrated transaction, and the separate services component of the transaction need not be separately analyzed under this section, provided that the controlled services 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 results in the controlled transaction. See § 1.482–1(d)(3).

(5) *Global dealing operations.* [Reserved].

(6) *Examples.* The following examples illustrate paragraphs (m)(1) through (4) of this section:

Example 1. (i) U.S. parent corporation Company X enters into an agreement to maintain equipment of Company Y, a foreign subsidiary. The maintenance of the equipment requires the use of spare parts. The cost of the spare parts necessary to maintain the equipment amounts to approximately 25 percent of the total costs of maintaining the equipment. Company Y pays a fee that includes a charge for labor and parts.

(ii) Whether this integrated transaction is evaluated as a controlled services transaction or is evaluated as a controlled services transaction and the transfer of tangible property depends on which approach will provide the most reliable measure of an arm's length result. If it is not possible to find comparable uncontrolled services transactions that involve similar services and tangible property transfers as the controlled transaction between Company X and Company Y, it will be necessary to determine the arm's length charge for the controlled services, and then to evaluate separately the arm's length charge for the tangible property transfers under § 1.482–1 and §§ 1.482–3 through 1.482–6. Alternatively, it may be possible to apply the comparable profits method of § 1.482–5, to evaluate the arm's length profit of Company X or Company Y from the integrated controlled transaction. The comparable profits method may provide the most reliable measure of measure of an arm's length result if uncontrolled parties are identified that perform similar, combined functions of maintaining and providing spare parts for similar equipment.

Example 2. (i) U.S. parent corporation Company X sells industrial equipment to its foreign subsidiary, Company Y. In connection with this sale, Company X renders to Company Y services that consist of demonstrating the use of the equipment and assisting in the effective start-up of the equipment. Company X structures the integrated transaction as a sale of tangible property and determines the transfer price under the comparable uncontrolled price method of § 1.482–3(b).

(ii) Whether this integrated transaction is evaluated as a transfer of tangible property or is evaluated as a controlled services transaction and a transfer of tangible property depends on which approach will provide the most reliable measure of an arm's length result. In this case, the controlled services may be similar to services rendered in the transactions used to determine the comparable uncontrolled price, or they may appropriately be considered a difference between the controlled transaction and comparable transactions with a definite and reasonably ascertainable effect on price for which appropriate adjustments can be made. See § 1.482–1(d)(3)(ii)(A)(6). In either case, application of the comparable uncontrolled price method to evaluate the integrated transaction may provide a reliable measure of an arm's length result, and application of a separate transfer pricing method for the controlled services element of the transaction is not necessary.

Example 3. (i) The facts are the same as in *Example 2* except that, after assisting Company Y in start-up, Company X also renders ongoing services, including instruction and supervision regarding Company Y's ongoing use of the equipment. Company X structures the entire transaction, including the incremental ongoing services, as a sale of tangible property, and determines the transfer price under the comparable uncontrolled price method of § 1.482–3(b).

(ii) Whether this integrated transaction is evaluated as a transfer of tangible property or is evaluated as a controlled services transaction and a transfer of tangible property depends on which approach will provide the most reliable measure of an arm's length result. It may not be possible to identify comparable uncontrolled transactions in which a seller of merchandise renders services similar to the ongoing services rendered by Company X to Company Y. In such a case, the incremental services in connection with ongoing use of the equipment could not be taken into account as a comparability factor because they are not similar to the services rendered in connection with sales of similar tangible property. Accordingly, it may be necessary to evaluate separately the transfer price for such services under this section in order to produce the most reliable measure of an arm's length result. Alternatively, it may be possible to apply the comparable profits method of § 1.482–5 to evaluate the arm's length profit of Company X or Company Y from the integrated controlled transaction. The comparable profits method may provide the most reliable measure of an arm's length result if uncontrolled parties are identified that perform the combined functions of

selling equipment and rendering ongoing after-sale services associated with such equipment. In that case, it would not be necessary to separately evaluate the transfer price for the controlled services under this section.

Example 4. (i) Company X, a U.S. corporation, and Company Y, a foreign corporation, are members of a controlled group. Both companies develop and manufacture adhesives. Company X also renders research and development services. As part of rendering these services, Company X provides technical manuals and documentation relating to Company X's manufacturing activities. In the process of performing research and development activities for Company Y, Company X developed know-how regarding a more cost-effective process to manufacture adhesives. Company X memorialized this know-how in technical manuals and other related technical documentation, and provided these documents to Company Y, without any restrictions on Company Y's use of the know-how or related materials.

(ii) The controlled services transaction between Company X and Company Y includes an element that constitutes the transfer of intangible property (*i.e.*, know-how). Because the element relating to the intangible property is material to the arm's length evaluation, the arm's length result for that element must be corroborated or determined by an analysis under § 1.482–4.

(n) *Effective date.* This section is generally applicable for taxable years beginning on or after the date of publication of this section as final regulations in the **Federal Register**.

Par. 8. In § 1.6038A–3(a)(3), *Example 4*, the text is revised to read as follows:

§ 1.6038A–3 Record maintenance.

- (a) * * *
- (3) * * *

Example 4. S, a U.S. reporting corporation, provides computer consulting services for its foreign parent, X. Based on the application of section 482 and the regulations thereunder, it is determined that the cost of services plus method, as described in § 1.482–9(d), will provide the most reliable measure of an arm's length result, based on the facts and circumstances of the controlled transaction between S and X. S is required to maintain records to permit verification upon audit of the comparable transactional costs (as described in § 1.482–9(d)(2)(iii)) used to calculate the arm's length price. Based on the facts and circumstances, if it is determined that X's records are relevant to determine the correct U.S. tax treatment of the controlled transaction between S and X, the record maintenance requirements under section 6038A(a) and this section will be applicable to the records of X.

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Par. 9. Section 1.6662–6 is amended by:

1. Redesignating paragraphs (d)(2)(ii)(A) through (d)(2)(ii)(G) as paragraphs (d)(2)(ii)(A)(1) through