

Treatment of Services Under Section 482; Allocation of Income and Deductions From Intangibles; Correction

Announcement 2004-7

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains corrections to a notice of proposed rulemaking (REG-146893-02, REG-115037-00, 2003-44 I.R.B. 967) and notice of public hearing that was published in the **Federal Register** on Wednesday, September 10, 2003 (68 FR 53448). The proposed regulations provide guidance regarding the treatment of controlled services transactions under section 482 and the allocation of income from intangibles in particular when one controlled taxpayer performs activities that increase (or are expected to increase) the value of an intangible owned by another controlled taxpayer.

FOR FURTHER INFORMATION CONTACT: J. Peter Luedtke or Helen Hong-George, (202) 435-5265 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking and notice of public hearing that is the subject of this correction is under section 482 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking and notice of public hearing contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed regulations and notice of public hearing (REG-146893-02, REG-115037-00), that was the subject of FR Doc. 03-22550, are corrected as follows:

1. On page 53448, column 1, in the preamble under the paragraph heading “DATES”, second line of the paragraph, the language “must be received December 9, 2003.” is corrected to read “must be received by December 9, 2003.”

2. On page 53449, column 2, in the preamble under the paragraph heading “2. Income Attributable to Intangibles”, fifth line of the paragraph, the language, “property. The Taxpayers and other” is corrected to read “property. Taxpayers and other”.

3. On page 53455, column 3, in the preamble under the paragraph heading “10. Total Services Costs—§1.482-9(j)”, the last line of the paragraph, the language, “analysis of the result expressed as ration” is corrected to read “analysis of the result expressed as the ratio”.

4. On page 53464, column 3, following §1.482-6(c)(3)(i)(B)(2), paragraph (c)(3)(ii) is added to read as follows:

§1.482-6 Profit split method.

(c) ***

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

(ii) ***

5. On page 53473, columns 2 and 3, §1.482-9(f)(2)(iv)(A) through (C) introductory text are corrected to read as follows:

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

(f) ***

(2) ***

(iv) Measurement of limitation on allocations: The rules of paragraphs (f)(2)(i) and (ii) of this section are expressed in this paragraph (f)(2)(iv) in equations and a table.

(A) The minimum arm's length markup necessary for an allocation by the Commissioner (Z) is the sum of the markup charged by the taxpayer (X) and the applicable number of percentage points determined under paragraph (f)(2)(ii) of this section (Y). Where the markup charged by the taxpayer is not less than zero, the minimum arm's length markup necessary for allocation by the Commissioner (Z) also equals the lesser of—

(1) The sum of six percentage points and half of the markup charged by the taxpayer (X); and

(2) Ten percentage points.

(B) The equations in paragraph (f)(2)(iv)(A) of this section may also be expressed as follows:

$$Z = X + Y = \min((6\% + 0.5 \times X), 10\%)$$
where $X \geq 0$.

(C) The following table illustrates the results of these calculations in representative cases:

6. On page 53480, column 1, §1.482-9(l)(4), *Example 12*, the last line of the paragraph, the language, “therefore Company Y is considered to obtain.” is corrected to read “therefore Company Y is considered to obtain a benefit from the activities.”

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