

[4830-01-p]

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Parts 1 and 31

[REG-146893-02]
[REG-115037-00]
[REG-138603-03]

RIN 1545-BB31, 1545-AY38, 1545-BC52

Treatment of Services Under Section 482
Allocation of Income and Deductions from Intangibles
Stewardship Expense

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations, notice of proposed rulemaking, and notice of public hearing.

SUMMARY: In a separate part to this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to the treatment of controlled services transactions under section 482. These temporary regulations also provide guidance regarding the allocation of income from intangibles, in particular with respect to contribution by a controlled party to the value of an intangible owned by another controlled party as it relates to controlled services transactions and modify the regulations under section 861 concerning stewardship expenses to be consistent with the changes made to the regulations under section 482. The text of those regulations also serves as the text of these proposed regulations. These proposed regulations also contain a coordination rule with global dealing operations. The Treasury Department and the IRS are presently working on new global dealing regulations and intend that when final regulations are issued, those regulations, not §1.482-9T, will govern the evaluation of the activities performed by a global dealing operation within the scope of those regulations. Pending finalization of the global

dealing regulations, taxpayers may rely on the proposed global dealing regulations, not the temporary services regulations, to govern financial transactions entered into in connection with a global dealing operation as defined in proposed §1.482-8. Therefore, proposed regulations under §1.482-9(m)(5) clarify that a controlled services transaction does not include a financial transaction entered into in connection with a global dealing operation. These proposed regulations potentially affect controlled taxpayers within the meaning of section 482. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by **[INSERT DATE 90 DAYS AFTER PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]**.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-146893-02, REG-115037-00, and REG-138603-03), Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be sent electronically, via the IRS internet site at www.irs.gov/regs or via Federal eRulemaking Portal at www.regulations.gov (IRS REG-146893-02, REG-115037-00, and REG-138603-03).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Thomas A. Vidano, (202) 435-5265, or Carol B. Tan, (202) 435-5265 for matters relating to section 482, or David Bergkuist (202) 622-3850 for matters relating to stewardship expenses; concerning submission of comments, the hearing, and/or, to be placed on the building access list to attend the hearing, [Insert Name], (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR parts 1 and 31) relating to section 482.

The temporary regulations set forth guidance on the treatment of controlled services transactions, the allocation from intangibles under section 482, and stewardship expenses under section 861. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations. These proposed regulations potentially affect controlled taxpayers within the meaning of section 482.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code (Code), this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed rule and how it may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these regulations are Thomas A. Vidano and Carol B. Tan, Office of Associate Chief Counsel (International).

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security and Unemployment compensation.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 31 are proposed to be amended as follows:

PART 1--INCOME TAXES

Par. 1. The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.482-9 also issued under 26 U.S.C. 482. * * *

Par. 2. Section 1.482-0 is amended as follows:

1. The section heading is revised.
2. The entries for §1.482-2(b) are revised.

3. The entries for §1.482-4(f)(3), (f)(4) and (f)(5) are revised and new entries for §1.482-4(f)(6) are added.

4. New entries for §§1.482-6T(c)(3)(i)(B)(1) and (2) and 1.482-9T are added.

The revisions and additions read as follows:

§1.482-0 Outline of regulations under section 482.

* * * * *

[The text of the proposed amendment to §1.482-0 is the same as the text of §1.482-0T published elsewhere in this issue of the **Federal Register**].

Par. 3. Section 1.482-1 is amended as follows:

1. Paragraphs (a)(1), (b)(2)(i), (d)(3)(ii)(C) Example 3, (d)(3)(v), (f)(2)(ii)(A), (f)(2)(iii)(B), (g)(4)(i), (g)(4)(iii) and paragraph (i) are revised.

2. Paragraphs (d)(3)(ii)(C), Example 4 and Example 5 and (j) are added.

The additions and revisions read as follows:

§1.482-1 Allocation of income and deductions among taxpayers.

(a)(1) [The text of the proposed amendment to §1.482-1(a)(1) is the same as the text of §1.482-1T(a)(1) published elsewhere in this issue of the **Federal Register**].

* * * * *

(b) * * * (1) * * *

(b)(2)(i) [The text of the proposed amendment to §1.482-1(b)(2)(i) is the same as the text of §1.482-1T(b)(2)(i) published elsewhere in this issue of the **Federal Register**].

* * * * *

(d) * * *

(3) * * *

(ii) * * *

(C) * * *

Example 3. [The text of the proposed amendment to §1.482-1(d)(3)(ii)(C), Example 3 is the same as the text of §1.482-1T(d)(3)(ii)(C) Example 3 published elsewhere in this issue of the **Federal Register**].

Example 4. [The text of the proposed amendment to §1.482-1(d)(3)(ii)(C) Example 4 is the same as the text of §1.482-1T(d)(3)(ii)(C) Example 4 published elsewhere in this issue of the **Federal Register**].

Example 5. [The text of the proposed amendment to §1.482-1(d)(3)(ii)(C) Example 5 is the same as the text of §1.482-1T(d)(3)(ii)(C) Example 5 published elsewhere in this issue of the **Federal Register**].

Example 6. [The text of the proposed amendment to §1.482-1(d)(3)(ii)(C) Example 6 is the same as the text of §1.482-1T(d)(3)(ii)(C) Example 6 published elsewhere in this issue of the **Federal Register**].

(v) Property or services. [The text of the proposed amendment to §1.482-1(d)(3)(v) is the same as the text of §1.482-1T(d)(3)(v) published elsewhere in this issue of the **Federal Register**].

* * * * *

(f) * * *

(2) * * *

(ii)(A) [The text of the proposed amendment to §1.482-1(f)(2)(ii)(A) is the same as the text of §1.482-1T(f)(2)(ii)(A) published elsewhere in this issue of the **Federal Register**].

(iii) * * *

(B) [The text of the proposed amendment to §1.482-1(f)(3)(iii)(B) is the same as the text of §1.482-1T(f)(3)(iii)(B) published elsewhere in this issue of the **Federal Register**].

* * * * *

(g) * * *

(4) * * * (i) * * * [The text of the proposed amendment to §1.482-1(g)(4)(i) is the same as the text of §1.482-1T(g)(4)(i) published elsewhere in this issue of the **Federal Register**].

(iii) * * *

Example 1. [The text of the proposed amendment to §1.482-1(g)(4)(iii) Example 1 is the same as the text of §1.482-1T(g)(4)(iii) Example 1 published elsewhere in this issue of the **Federal Register**].

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(i) [The text of the proposed amendment to §1.482-1(i) is the same as the text of §1.482-1T(i) published elsewhere in this issue of the **Federal Register**].

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(j) [The text of the proposed amendment to §1.482-1(j) is the same as the text of §1.482-1T(j)(1) and (2) published elsewhere in this issue of the **Federal Register**].

Par. 4. Section 1.482-2 is amended as follows:

1. Paragraph (b) is revised.
2. Paragraph (e) is added.

The revision and addition reads as follows:

§1.482-2 Determination of taxable income in specific situations.

* * * * *

(b) [The text of the proposed amendment to §1.482-2(b) is the same as the text of §1.482-2T(b) published elsewhere in this issue of the **Federal Register**].

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(e) [The text of the proposed amendment to §1.482-2(e) is the same as the text of §1.482-2T(e)(1) and (2) published elsewhere in this issue of the **Federal Register**].

Par. 5. Section 1.482-4 is amended as follows:

1. Paragraph (f)(3) is revised.
2. Paragraphs (f)(4) and (f)(5) are redesignated as paragraphs (f)(5) and (f)(6), respectively.
3. New paragraphs (f)(4) and (f)(7) are added.

The revision and addition read as follows:

§1.482-4 Methods to determine taxable income in connection with a transfer of intangible property.

* * * * *

(f) * * *

(3) [The text of the proposed amendment to §1.482-4(f)(3) is the same as the text of §1.482-4T(f)(3) published elsewhere in this issue of the **Federal Register**].

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(4) [The text of the proposed amendment to §1.482-4(f)(4) is the same as the text of §1.482-4T(f)(4) published elsewhere in this issue of the **Federal Register**].

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(7) [The text of the proposed amendment to §1.482-4(f)(7) is the same as the text of §1.482-4T(f)(7)(i) and (ii) published elsewhere in this issue of the **Federal Register**].

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Par. 6. Section 1.482-6 is amended by revising paragraphs (c)(2)(ii)(B)(1), (c)(2)(ii)(D), (c)(3)(i)(A), (c)(3)(i)(B), and (c)(3)(ii)(D), and adding paragraph (d) to read as follows:

§1.482-6 Profit split method.

* * * * *

(c) * * *

(2) * * *

(ii) * * *

(B) * * * (1) * * * [The text of the proposed amendment to §1.482-6(c)(2)(ii)(B)(1) is the same as the text of §1.482-6T(c)(2)(ii)(B)(1) published elsewhere in this issue of the **Federal Register**].

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(D) [The text of the proposed amendment to §1.482-6(c)(2)(ii)(D) is the same as the text of §1.482-6T(c)(2)(ii)(D) published elsewhere in this issue of the **Federal Register**].

* * * * *

(3) * * *

(i) * * * (A) [The text of the proposed amendment to §1.482-6(c)(3)(i)(A) is the same as the text of §1.482-6T(c)(3)(i)(A) published elsewhere in this issue of the **Federal Register**].

(B) [The text of the proposed amendment to §1.482-6(c)(3)(i)(B) is the same as the text of §1.482-6T(c)(3)(i)(B) published elsewhere in this issue of the **Federal Register**].

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(ii) * * *

(D) [The text of the proposed amendment to §1.482-6(c)(3)(ii)(D) is the same as the text of §1.482-6T(c)(3)(ii)(D) published elsewhere in this issue of the **Federal Register**].

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(d) [The text of the proposed amendment to §1.482-6(d) is the same as the text of §1.482-6T(d)(1) and (2) published elsewhere in this issue of the **Federal Register**].

Par. 7. Section 1.482-8 is amended by adding Examples 10 through 12 to read as follows:
§1.482-8 Examples of the best method rule.

* * * * *

(a) Example 10. Cost of services plus method preferred to other methods. [The text of the proposed amendment to §1.482-8(a) Example 10 is the same as the text of §1.482-8T(a) Example 10 published elsewhere in this issue of the **Federal Register**].

Example 11. CPM for services preferred to other methods. [The text of the proposed amendment to §1.482-8(a) Example 11 is the same as the text of §1.482-8T(a) Example 11 published elsewhere in this issue of the **Federal Register**].

Example 12. Residual profit split preferred to other methods. [The text of the proposed amendment to §1.482-8(a) Example 12 is the same as the text of §1.482-8T(a) Example 12 published elsewhere in this issue of the **Federal Register**].

(b) [The text of the proposed amendment to §1.482-8(b) is the same as the text of §1.482-8T(b)(1) and (2) published elsewhere in this issue of the **Federal Register**].

Par. 8. 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) through (m)(5) [The text of the proposed §1.482-9(a) through (m)(5) is the same as the text of §1.482-9T(a) through (m)(5) published elsewhere in this issue of the **Federal Register**].

(m)(6) Global dealing operations. A controlled services transaction does not include a financial transaction entered into in connection with a global dealing operation as defined in §1.482-8.

(n) [The text of the proposed §1.482-9(n) is the same as the text of §1.482-9T(n)(1) and (n)(2) published elsewhere in this issue of the **Federal Register**].

Par. 9. Section 1.861-8 is amended by revising paragraphs (a)(5), the fifth and sixth sentences in paragraph (b)(3), (e)(4), (f)(4)(i), (g) Examples 17, 18, and 30, and the first sentence in paragraph (h) introductory text to read as follows:

§1.861-8 Computation of taxable income from sources within the United States and from other sources and activities.

(a) * * *

(5) [The text of the proposed amendment to §1.861-8(a)(5) is the same as the text of §1.861-8T (a)(5) published elsewhere in this issue of the **Federal Register**]

(b) * * *

(3) * * * [The text of the proposed amendment to §1.861-8(b)(3) is the same as the text in §1.861-8T(b)(3) published elsewhere in this issue of the **Federal Register**]. * * *

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(e) * * *

(4) [The text of the proposed amendment to §1.861-8(e)(4) is the same as the text of §1.861-8T(e)(4) published elsewhere in this issue of the **Federal Register**].

(f) * * *

(4)* * * (i) [The text of the proposed amendment to §1.861-8(f)(4)(i) is the same as the text of §1.861-8T(e)(4)(i) published elsewhere in this issue of the **Federal Register**].

(g) * * *

Example 17. [The text of the proposed amendment to §1.861-8(g) Example 17 is the same as the text of §1.861-8T(g) Example 17, published elsewhere in this issue of the **Federal Register**].

Example 18. [The text of the proposed amendment to §1.861-8(g) Example 18 is the same as the text of §1.861-8T(g) Example 18, published elsewhere in this issue of the **Federal Register**].

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Example 30. [The text of the proposed amendment to §1.861-8(g) Example 30 is the same as the text of §1.861-8T(g) Example 30, published elsewhere in this issue of the **Federal Register**].

(h) [The text of the proposed amendment to §1.861-8(h) is the same as the text of §1.861-8T(h)(1) published elsewhere in this issue of the **Federal Register**]. * * *

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Par. 10 Section 1.6038A-3(a)(3) is amended by revising paragraph (a)(3) Example 4 and (i) to read:

§1.6038A-3 Record maintenance.

(a) * * *

(3) * * *

Example 4. [The text of the proposed amendment to §1.6038A-3, Example 4 is the same as the text of §1.6038A-3T, Example 4 published elsewhere in this issue of the **Federal Register**].

* * * * *

(i) [The text of the proposed amendment to §1.6038A-3(i) is the same as the text of §1.6038A-3T(i)(1) and (2) published elsewhere in this issue of the **Federal Register**].

Par. 11. Section 1.6662-6 is amended by revising paragraphs (d)(2)(ii)(B), (d)(2)(iii)(B)(4), (d)(2)(iii)(B)(6) and (g) to read as follows:

§1.6662-6 Transactions between persons described in section 482 and net section 482 transfer price adjustments.

* * * * *

(d) * * *

(2) * * *

(ii) * * *

(B) [The text of the proposed amendment to §1.6662-6(d)(2)(ii)(B) is the same as the text of §1.6662-6T(d)(2)(ii)(B) published elsewhere in this issue of the **Federal Register**].

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(iii) * * *

(B) * * * (4) [The text of the proposed amendment to §1.6662-6(d)(2)(iii)(B)(4) is the same as the text of §1.6662-6T(d)(2)(iii)(B)(4) published elsewhere in this issue of the **Federal Register**].

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(6) [The text of the proposed amendment to §1.6662-6(d)(2)(iii)(B)(6) is the same as the text of §1.6662-6T(d)(2)(iii)(B)(6) published elsewhere in this issue of the **Federal Register**].

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(g) [The text of the proposed amendment to §1.6662-6(g) is the same as the text of §1.6662-6T(g)(1) and (2) published elsewhere in this issue of the **Federal Register**].

PART 3--EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT THE SOURCE

Par. 12. The authority citation for part 31 continues to read as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 13. Section 31.3121(s)-1 is amended by revising paragraphs (c)(2)(iii) and (d) to read as follows:

§31.3121(s)-1 Concurrent employment by related corporations with common paymaster.

* * * * *

(c) * * *

(2) * * *

(iii) [The text of the proposed amendment to §31.3121(s)-1(c)(2)(iii) is the same as the text of §31.3121(s)-1T(c)(2)(iii) published elsewhere in this issue of the **Federal Register**].

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(d) [The text of the proposed amendment to §31.3121(s)-1(d) is the same as the text of §31.3121(s)-1T(d)(1) and (2) published elsewhere in this issue of the **Federal Register**].

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Mark E. Matthews,
Deputy Commissioner for Services and Enforcement.