whether or not the terms of such transaction are formally documented. A transaction also includes the performance of any services for the benefit of, or on behalf of, another taxpayer.

(8) *Controlled transaction* or *controlled transfer* means any transaction or transfer between two or more members of the same group of controlled taxpayers. The term *uncontrolled transaction* means any transaction between two or more taxpayers that are not members of the same group of controlled taxpayers.

(9) *True taxable income* means, in the case of a controlled taxpayer, the taxable income that would have resulted had it dealt with the other member or members of the group at arm's length. It does not mean the taxable income resulting to the controlled taxpayer by reason of the particular contract, transaction, or arrangement the controlled taxpayer chose to make (even though such contract, transaction, or arrangement is legally binding upon the parties thereto).

(10) *Uncontrolled comparable* means the uncontrolled transaction or uncontrolled taxpayer that is compared with a controlled transaction or taxpayer under any applicable pricing methodology. Thus, for example, under the comparable profits method, an uncontrolled comparable is any uncontrolled taxpayer from which data is used to establish a comparable operating profit.

(j) *Effective dates*—(1) The regulations in this are generally effective for taxable years beginning after October 6, 1994.

(2) Taxpayers may elect to apply retroactively all of the provisions of these regulations for any open taxable year. Such election will be effective for the year of the election and all subsequent taxable years.

(3) Although these regulations are generally effective for taxable years as stated, the final sentence of section 482 (requiring that the income with respect to transfers or licenses of intangible property be commensurate with the income attributable to the intangible) is generally effective for taxable years beginning after December 31, 1986. For the period prior to the effective date of these regulations, the final sentence of section 482 must be applied using any reasonable method not inconsistent with the statute. The IRS considers a method that applies these regulations or their general principles to be a reasonable method.

(4) These regulations will not apply with respect to transfers made or licenses granted to foreign persons before November 17, 1985, or before August 17, 1986, for transfers or licenses to others. Nevertheless, they will apply with respect to transfers or licenses before such dates if, with respect to property transferred pursuant to an earlier and continuing transfer agreement, such property was not in existence or owned by the taxpayer on such date.

[T.D. 8552, 59 FR 34990, July 8, 1994]

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

(a) *Loans or advances*—(1) *Interest on bona fide indebtedness*—(i) *In general.* Where one member of a group of controlled entities makes a loan or advance directly or indirectly to, or otherwise becomes a creditor of, another member of such group and either charges no interest, or charges interest at a rate which is not equal to an arm's length rate of interest (as defined in paragraph (a)(2) of this section) with respect to such loan or advance, the district director may make appropriate allocations to reflect an arm's length rate of interest for the use of such loan or advance.

(ii) *Application of paragraph (a) of this section*—(A) *Interest on bona fide indebtedness.* Paragraph (a) of this section applies only to determine the appropriateness of the rate of interest charged on the principal amount of a bona fide indebtedness between members of a group of controlled entities, including—

(*1*) Loans or advances of money or other consideration (whether or not evidenced by a written instrument); and

(*2*) Indebtedness arising in the ordinary course of business from sales, leases, or the rendition of services by or between members of the group, or any other similar extension of credit.

(B) *Alleged indebtedness.* This paragraph (a) does not apply to so much of

an alleged indebtedness which is not in fact a bona fide indebtedness, even if the stated rate of interest thereon would be within the safe haven rates prescribed in paragraph (a)(2)(iii) of this section. For example, paragraph (a) of this section does not apply to payments with respect to all or a portion of such alleged indebtedness where in fact all or a portion of an alleged indebtedness is a contribution to the capital of a corporation or a distribution by a corporation with respect to its shares. Similarly, this paragraph (a) does not apply to payments with respect to an alleged purchase-money debt instrument given in consideration for an alleged sale of property between two controlled entities where in fact the transaction constitutes a lease of the property. Payments made with respect to alleged indebtedness (including alleged stated interest thereon) shall be treated according to their substance. See § 1.482–2(a)(3)(i).

(iii) *Period for which interest shall be charged*—(A) *General rule*. This paragraph (a)(1)(iii) is effective for indebtedness arising after June 30, 1988. See § 1.482–2(a)(3) (26 CFR Part 1 edition revised as of April 1, 1988) for indebtedness arising before July 1, 1988. Except as otherwise provided in paragraphs (a)(1)(iii)(B) through (E) of this section, the period for which interest shall be charged with respect to a bona fide indebtedness between controlled entities begins on the day after the day the indebtedness arises and ends on the day the indebtedness is satisfied (whether by payment, offset, cancellation, or otherwise). Paragraphs (a)(1)(iii)(B) through (E) of this section provide certain alternative periods during which interest is not required to be charged on certain indebtedness. These exceptions apply only to indebtedness described in paragraph (a)(1)(ii)(A)(2) of this section (relating to indebtedness incurred in the ordinary course of business from sales, services, etc., between members of the group) and not evidenced by a written instrument requiring the payment of interest. Such amounts are hereinafter referred to as intercompany trade receivables. The period for which interest is not required to be charged on intercompany trade receivables under this paragraph (a)(1)(iii) is called the interest-free period. In general, an intercompany trade receivable arises at the time economic performance occurs (within the meaning of section 461(h) and the regulations thereunder) with respect to the underlying transaction between controlled entities. For purposes of this paragraph (a)(1)(iii), the term United States includes any possession of the United States, and the term foreign country excludes any possession of the United States.

(B) *Exception for certain intercompany transactions in the ordinary course of business*. Interest is not required to be charged on an intercompany trade receivable until the first day of the third calendar month following the month in which the intercompany trade receivable arises.

(C) *Exception for trade or business of debtor member located outside the United States*. In the case of an intercompany trade receivable arising from a transaction in the ordinary course of a trade or business which is actively conducted outside the United States by the debtor member, interest is not required to be charged until the first day of the fourth calendar month following the month in which such intercompany trade receivable arises.

(D) *Exception for regular trade practice of creditor member or others in creditor's industry*. If the creditor member or unrelated persons in the creditor member's industry, as a regular trade practice, allow unrelated parties a longer period without charging interest than that described in paragraph (a)(1)(iii)(B) or (C) of this section (whichever is applicable) with respect to transactions which are similar to transactions that give rise to intercompany trade receivables, such longer interest-free period shall be allowed with respect to a comparable amount of intercompany trade receivables.

(E) *Exception for property purchased for resale in a foreign country—(1) General rule*. If in the ordinary course of business one member of the group (related purchaser) purchases property from another member of the group (related seller) for resale to unrelated persons located in a particular foreign country, the related purchaser and the related seller may use as the interest-

free period for the intercompany trade receivables arising during the related seller's taxable year from the purchase of such property within the same product group an interest-free period equal the sum of—

(*i*) The number of days in the related purchaser's average collection period (as determined under paragraph (a)(1)(iii)(E)(*2*) of this section) for sales of property within the same product group sold in the ordinary course of business to unrelated persons located in the same foreign country; plus

(*ii*) Ten (10) calendar days.

(*2*) *Interest-free period.* The interest-free period under this paragraph (a)(1)(iii)(E), however, shall in no event exceed 183 days. The related purchaser does not have to conduct business outside the United States in order to be eligible to use the interest-free period of this paragraph (a)(1)(iii)(E). The interest-free period under this paragraph (a)(1)(iii)(E) shall not apply to intercompany trade receivables attributable to property which is manufactured, produced, or constructed (within the meaning of §1.954–3(a)(4)) by the related purchaser. For purposes of this paragraph (a)(1)(iii)(E) a product group includes all products within the same three-digit Standard Industrial Classification (SIC) Code (as prepared by the Statistical Policy Division of the Office of Management and Budget, Executive Office of the President.)

(*3*) *Average collection period.* An average collection period for purposes of this paragraph (a)(1)(iii)(E) is determined as follows—

(*i*) *Step 1.* Determine total sales (less returns and allowances) by the related purchaser in the product group to unrelated persons located in the same foreign country during the related purchaser's last taxable year ending on or before the first day of the related seller's taxable year in which the intercompany trade receivable arises.

(*ii*) *Step 2.* Determine the related purchaser's average month-end accounts receivable balance with respect to sales described in paragraph (a)(1)(iii)(E)(*2*)(*i*) of this section for the related purchaser's last taxable year ending on or before the first day of the related seller's taxable year in which the intercompany trade receivable arises.

(*iii*) *Step 3.* Compute a receivables turnover rate by dividing the total sales amount described in paragraph (a)(1)(iii)(E)(*2*)(*i*) of this section by the average receivables balance described in paragraph (a)(1)(iii)(E)(*2*)(*ii*) of this section.

(*iv*) *Step 4.* Divide the receivables turnover rate determined under paragraph (a)(1)(iii)(E)(*2*)(*iii*) of this section into 365, and round the result to the nearest whole number to determine the number of days in the average collection period.

(*v*) *Other considerations.* If the related purchaser makes sales in more than one foreign country, or sells property in more than one product group in any foreign country, separate computations of an average collection period, by product group within each country, are required. If the related purchaser resells fungible property in more than one foreign country and the intercompany trade receivables arising from the related party purchase of such fungible property cannot reasonably be identified with resales in particular foreign countries, then solely for the purpose of assigning an interest-free period to such intercompany trade receivables under this paragraph (a)(1)(iii)(E), an amount of each such intercompany trade receivable shall be treated as allocable to a particular foreign country in the same proportion that the related purchaser's sales of such fungible property in such foreign country during the period described in paragraph (a)(1)(iii)(E)(2)(i) of this section bears to the related purchaser's sales of all such fungible property in all such foreign countries during such period. An interest-free period under this paragraph (a)(1)(iii)(E) shall not apply to any intercompany trade receivables arising in a taxable year of the related seller if the related purchaser made no sales described in paragraph (a)(1)(iii)(E)(2)(i) of this section from which the appropriate interest-free period may be determined.

(*4*) *Illustration.* The interest-free period provided under paragraph (a)(1)(iii)(E) of this section may be illustrated by the following example:

Example—(i) Facts. X and Y use the calendar year as the taxable year and are members of the same group of controlled entities within the meaning of section 482. For Y's 1988 calendar taxable year X and Y intend to use the interest-free period determined under this paragraph (a)(1)(iii)(E) for intercompany trade receivables attributable to X's purchases of certain products from Y for resale by X in the ordinary course of business to unrelated persons in country Z. For its 1987 calendar taxable year all of X's sales in country Z were of products within a single product group based upon a three-digit SIC code, were not manufactured, produced, or constructed (within the meaning of §1.954–3(a)(4)) by X, and were sold in the ordinary course of X's trade or business to unrelated persons located only in country Z. These sales and the month-end accounts receivable balances (for such sales and for such sales uncollected from prior months) are as follows:

Month	Sales	Accounts receivable
Jan. 1987	$500,000	$2,835,850
Feb.	600,000	2,840,300
Mar.	450,000	2,850,670
Apr.	550,000	2,825,700
May.	650,000	2,809,360
June	525,000	2,803,200
July	400,000	2,825,850
Aug.	425,000	2,796,240
Sept.	475,000	2,839,390
Oct.	525,000	2,650,550
Nov.	450,000	2,775,450
Dec. 1987	650,000	2,812,600
Totals	6,200,000	33,665,160

(ii) *Average collection period.* X's total sales within the same product group to unrelated persons within country Z for the period are $6,200,000. The average receivables balance for the period is $2,805,430 ($33,665,160/12). The average collection period in whole days is determined as follows:

$$\text{Receivables Turnover Rate} = \frac{\$6{,}200{,}000}{\$2{,}805{,}430} = 2.21$$

$$\text{Average Collection Period} = \frac{365}{2.21} = \begin{array}{l}165.16 \text{ days, rounded to the} \\ \text{nearest whole day} = 165 \text{ days.}\end{array}$$

(iii) *Interest-free period.* Accordingly, for intercompany trade receivables incurred by X during Y's 1988 calendar taxable year attributable to the purchase of property from Y for resale to unrelated persons located in country Z and included in the product group, X may use an interest-free period of 175 days (165 days in the average collection period plus 10 days, but not in excess of a maximum of 183 days). All other intercompany trade receivables incurred by X are subject to the interest-free periods described in paragraphs (a)(1)(iii) (B), (C), or (D), whichever are applicable. If X makes sales in other foreign countries in addition to country Z or makes sales of property in more than one product group in any foreign country, separate computations of X's average collection period, by product group within each country, are required in order for X and Y to determine an interest-free period for such product groups in such foreign countries under this paragraph (a)(1)(iii)(E).

(iv) *Payment; book entries*—(A) Except as otherwise provided in this paragraph (a)(1)(iv), in determining the period of time for which an amount owed by one member of the group to another member is outstanding, payments or other credits to an account are considered to be applied against the earliest amount outstanding, that is, payments or credits are applied against amounts in a first-in, first-out (FIFO) order. Thus, tracing payments to individual intercompany trade receivables is generally not required in order to determine whether a particular intercompany trade receivable has been paid within the applicable interest-free period determined under paragraph (a)(1)(iii) of this section. The application of this paragraph (a)(1)(iv)(A) may be illustrated by the following example:

Example—(i) Facts. X and Y are members of a group of controlled entities within the meaning of section 482. Assume that the balance of intercompany trade receivables owed by X to Y on June 1 is $100, and that all of the $100 balance represents amounts incurred by X to Y during the month of May. During the month of June X incurs an additional $200 of intercompany trade receivables to Y. Assume that on July 15, $60 is properly credited against X's intercompany account to Y,

and that $240 is properly credited against the intercompany account on August 31. Assume that under paragraph (a)(1)(iii)(B) of this section interest must be charged on X's intercompany trade receivables to Y beginning with the first day of the third calendar month following the month the intercompany trade receivables arise, and that no alternative interest-free period applies. Thus, the interest-free period for intercompany trade receivables incurred during the month of May ends on July 31, and the interest-free period for intercompany trade receivables incurred during the month of June ends on August 31.

(ii) *Application of payments*. Using a FIFO payment order, the aggregate payments of $300 are applied first to the opening June balance, and then to the additional amounts incurred during the month of June. With respect to X's June opening balance of $100, no interest is required to be accrued on $60 of such balance paid by X on July 15, because such portion was paid within its interest-free period. Interest for 31 days, from August 1 to August 31 inclusive, is required to be accrued on the $40 portion of the opening balance not paid until August 31. No interest is required to be accrued on the $200 of intercompany trade receivables X incurred to Y during June because the $240 credited on August 31, after eliminating the $40 of indebtedness remaining from periods before June, also eliminated the $200 incurred by X during June prior to the end of the interest-free period for that amount. The amount of interest incurred by X to Y on the $40 amount during August creates bona fide indebtedness between controlled entities and is subject to the provisions of paragraph (a)(1)(iii)(A) of this section without regard to any of the exceptions contained in paragraphs (a)(1)(iii)(B) through (E).

(B) Notwithstanding the first-in, first-out payment application rule described in paragraph (a)(1)(iv)(A) of this section, the taxpayer may apply payments or credits against amounts owed in some other order on its books in accordance with an agreement or understanding of the related parties if the taxpayer can demonstrate that either it or others in its industry, as a regular trade practice, enter into such agreements or understandings in the case of similar balances with unrelated parties.

(2) *Arm's length interest rate*—(i) *In general*. For purposes of section 482 and paragraph (a) of this section, an arm's length rate of interest shall be a rate of interest which was charged, or would have been charged, at the time the indebtedness arose, in independent transactions with or between unrelated parties under similar circumstances. All relevant factors shall be considered, including the principal amount and duration of the loan, the security involved, the credit standing of the borrower, and the interest rate prevailing at the situs of the lender or creditor for comparable loans between unrelated parties.

(ii) *Funds obtained at situs of borrower*. Notwithstanding the other provisions of paragraph (a)(2) of this section, if the loan or advance represents the proceeds of a loan obtained by the lender at the situs of the borrower, the arm's length rate for any taxable year shall be equal to the rate actually paid by the lender increased by an amount which reflects the costs or deductions incurred by the lender in borrowing such amounts and making such loans, unless the taxpayer establishes a more appropriate rate under the standards set forth in paragraph (a)(2)(i) of this section.

(iii) *Safe haven interest rates for certain loans and advances made after May 8, 1986*—(A) *Applicability*—(*1*) *General rule*. Except as otherwise provided in paragraph (a)(2) of this section, paragraph (a)(2)(iii)(B) applies with respect to the rate of interest charged and to the amount of interest paid or accrued in any taxable year—

(*i*) Under a term loan or advance between members of a group of controlled entities where (except as provided in paragraph (a)(2)(iii)(A)(*2*)(*ii*) of this section) the loan or advance is entered into after May 8, 1986; and

(*ii*) After May 8, 1986 under a demand loan or advance between such controlled entities.

(*2*) *Grandfather rule for existing loans*. The safe haven rates prescribed in paragraph (a)(2)(iii)(B) of this section shall not apply, and the safe haven rates prescribed in § 1.482–2(a)(2)(iii) (26 CFR part 1 edition revised as of April 1, 1985), shall apply to—

(*i*) Term loans or advances made before May 9, 1986; and

(*ii*) Term loans or advances made before August 7, 1986, pursuant to a binding written contract entered into before May 9, 1986.

(B) *Safe haven interest rate based on applicable Federal rate.* Except as otherwise provided in this paragraph (a)(2), in the case of a loan or advance between members of a group of controlled entities, an arm's length rate of interest referred to in paragraph (a)(2)(i) of this section shall be for purposes of chapter 1 of the Internal Revenue Code—

(*1*) The rate of interest actually charged if that rate is—

(*i*) Not less than 100 percent of the applicable Federal rate (lower limit); and

(*ii*) Not greater than 130 percent of the applicable Federal rate (upper limit); or

(*2*) If either no interest is charged or if the rate of interest charged is less than the lower limit, then an arm's length rate of interest shall be equal to the lower limit, compounded semiannually; or

(*3*) If the rate of interest charged is greater than the upper limit, then an arm's length rate of interest shall be equal to the upper limit, compounded semiannually, unless the taxpayer establishes a more appropriate compound rate of interest under paragraph (a)(2)(i) of this section. However, if the compound rate of interest actually charged is greater than the upper limit and less than the rate determined under paragraph (a)(2)(i) of this section, or if the compound rate actually charged is less than the lower limit and greater than the rate determined under paragraph (a)(2)(i) of this section, then the compound rate actually charged shall be deemed to be an arm's length rate under paragraph (a)(2)(i). In the case of any sale-leaseback described in section 1274(e), the lower limit shall be 110 percent of the applicable Federal rate, compounded semiannually.

(C) *Applicable Federal rate.* For purposes of paragraph (a)(2)(iii)(B) of this section, the term applicable Federal rate means, in the case of a loan or advance to which this section applies and having a term of—

(*1*) Not over 3 years, the Federal short-term rate;

(*2*) Over 3 years but not over 9 years, the Federal mid-term rate; or

(*3*) Over 9 years, the Federal long-term rate, as determined under section 1274(d) in effect on the date such loan or advance is made. In the case of any sale or exchange between controlled entities, the lower limit shall be the lowest of the applicable Federal rates in effect for any month in the 3-calendar- month period ending with the first calendar month in which there is a binding written contract in effect for such sale or exchange (lowest 3-month rate, as defined in section 1274(d)(2)). In the case of a demand loan or advance to which this section applies, the applicable Federal rate means the Federal short-term rate determined under section 1274(d) (determined without regard to the lowest 3-month short term rate determined under section 1274(d)(2)) in effect for each day on which any amount of such loan or advance (including unpaid accrued interest determined under paragraph (a)(2) of this section) is outstanding.

(D) *Lender in business of making loans.* If the lender in a loan or advance transaction to which paragraph (a)(2) of this section applies is regularly engaged in the trade or business of making loans or advances to unrelated parties, the safe haven rates prescribed in paragraph (a)(2)(iii)(B) of this section shall not apply, and the arm's length interest rate to be used shall be determined under the standards described in paragraph (a)(2)(i) of this section, including reference to the interest rates charged in such trade or business by the lender on loans or advances of a similar type made to unrelated parties at and about the time the loan or advance to which paragraph (a)(2) of this section applies was made.

(E) *Foreign currency loans.* The safe haven interest rates prescribed in paragraph (a)(2)(iii)(B) of this section do not apply to any loan or advance the principal or interest of which is expressed in a currency other than U.S. dollars.

(3) *Coordination with interest adjustments required under certain other Code sections.* If the stated rate of interest on the stated principal amount of a loan or advance between controlled entities is subject to adjustment under section 482 and is also subject to adjustment under any other section of

the Internal Revenue Code (for example, section 467, 483, 1274 or 7872), section 482 and paragraph (a) of this section may be applied to such loan or advance in addition to such other Internal Revenue Code section. After the enactment of the Tax Reform Act of 1964, Pub. L. 98–369, and the enactment of Pub. L. 99–121, such other Internal Revenue Code sections include sections 467, 483, 1274 and 7872. The order in which the different provisions shall be applied is as follows—

(i) First, the substance of the transaction shall be determined; for this purpose, all the relevant facts and circumstances shall be considered and any law or rule of law (assignment of income, step transaction, etc.) may apply. Only the rate of interest with respect to the stated principal amount of the bona fide indebtedness (within the meaning of paragraph (a)(1) of this section), if any, shall be subject to adjustment under section 482, paragraph (a) of this section, and any other Internal Revenue Code section.

(ii) Second, the other Internal Revenue Code section shall be applied to the loan or advance to determine whether any amount other than stated interest is to be treated as interest, and if so, to determine such amount according to the provisions of such other Internal Revenue Code section.

(iii) Third, whether or not the other Internal Revenue Code section applies to adjust the amounts treated as interest under such loan or advance, section 482 and paragraph (a) of this section may then be applied by the district director to determine whether the rate of interest charged on the loan or advance, as adjusted by any other Code section, is greater or less than an arm's length rate of interest, and if so, to make appropriate allocations to reflect an arm's length rate of interest.

(iv) Fourth, section 482 and paragraphs (b) through (d) of this section and §§ 1.482–3 through 1.482–7, if applicable, may be applied by the district director to make any appropriate allocations, other than an interest rate adjustment, to reflect an arm's length transaction based upon the principal amount of the loan or advance and the interest rate as adjusted under paragraph (a)(3) (i), (ii) or (iii) of this section. For example, assume that two commonly controlled taxpayers enter into a deferred payment sale of tangible property and no interest is provided, and assume also that section 483 is applied to treat a portion of the stated sales price as interest, thereby reducing the stated sales price. If after this recharacterization of a portion of the stated sales price as interest, the recomputed sales price does not reflect an arm's length sales price under the principles of § 1.482–3, the district director may make other appropriate allocations (other than an interest rate adjustment) to reflect an arm's length sales price.

(4) *Examples*. The principles of paragraph (a)(3) of this section may be illustrated by the following examples:

Example 1. An individual, A, transfers $20,000 to a corporation controlled by A in exchange for the corporation's note which bears adequate stated interest. The district director recharacterizes the transaction as a contribution to the capital of the corporation in exchange for preferred stock. Under paragraph (a)(3)(i) of this section, section 1.482–2(a) does not apply to the transaction because there is no bona fide indebtedness.

Example 2. B, an individual, is an employee of Z corporation, and is also the controlling shareholder of Z. Z makes a term loan of $15,000 to B at a rate of interest that is less than the applicable Federal rate. In this instance the other operative Code section is section 7872. Under section 7872(b), the difference between the amount loaned and the present value of all payments due under the loan using a discount rate equal to 100 percent of the applicable Federal rate is treated as an amount of cash transferred from the corporation to B and the loan is treated as having original issue discount equal to such amount. Under paragraph (a)(3)(iii) of this section, section 482 and paragraph (a) of this section may also be applied by the district director to determine if the rate of interest charged on this $15,000 loan (100 percent of the AFR, compounded semiannually, as adjusted by section 7872) is an arm's length rate of interest. Because the rate of interest on the loan, as adjusted by section 7872, is within the safe haven range of 100–130 percent of the AFR, compounded semiannually, no further interest rate adjustments under section 482 and paragraph (a) of this section will be made to this loan.

Example 3. The facts are the same as in Example 2 except that the amount lent by Z to B is $9,000, and that amount is the aggregate outstanding amount of loans between Z and B. Under the $10,000 de minimis exception of section 7872(c)(3), no adjustment for interest

will be made to this $9,000 loan under section 7872. Under paragraph (a)(3)(iii) of this section, the district director may apply section 482 and paragraph (a) of this section to this $9,000 loan to determine whether the rate of interest charged is less than an arm's length rate of interest, and if so, to make appropriate allocations to reflect an arm's length rate of interest.

Example 4. X and Y are commonly controlled taxpayers. At a time when the applicable Federal rate is 12 percent, compounded semiannually, X sells property to Y in exchange for a note with a stated rate of interest of 18 percent, compounded semiannually. Assume that the other applicable Code section to the transaction is section 483. Section 483 does not apply to this transaction because, under section 483(d), there is no total unstated interest under the contract using the test rate of interest equal to 100 percent of the applicable Federal rate. Under paragraph (a)(3)(iii) of this section, section 482 and paragraph (a) of this section may be applied by the district director to determine whether the rate of interest under the note is excessive, that is, to determine whether the 18 percent stated interest rate under the note exceeds an arm's length rate of interest.

Example 5. Assume that A and B are commonly controlled taxpayers and that the applicable Federal rate is 10 percent, compounded semiannually. On June 30, 1986, A sells property to B and receives in exchange B's purchase-money note in the amount of $2,000,000. The stated interest rate on the note is 9%, compounded semiannually, and the stated redemption price at maturity on the note is $2,000,000. Assume that the other applicable Code section to this transaction is section 1274. As provided in section 1274A(a) and (b), the discount rate for purposes of section 1274 will be nine percent, compounded semiannually, because the stated principal amount of B's note does not exceed $2,800,000. Section 1274 does not apply to this transaction because there is adequate stated interest on the debt instrument using a discount rate equal to 9%, compounded semiannually, and the stated redemption price at maturity does not exceed the stated principal amount. Under paragraph (a)(3)(iii) of this section, the district director may apply section 482 and paragraph (a) of this section to this $2,000,000 note to determine whether the 9% rate of interest charged is less than an arm's length rate of interest, and if so, to make appropriate allocations to reflect an arm's length rate of interest.

(b) *Performance of services for another*—(1) *General rule.* Where one member of a group of controlled entities performs marketing, managerial, administrative, technical, or other services for the benefit of, or on behalf of another member of the group without charge, or at a charge which is not equal to an arm's length charge as defined in paragraph (b)(3) of this section, the district director may make appropriate allocations to reflect an arm's length charge for such services.

(2) *Benefit test*—(i) Allocations may be made to reflect arm's length charges with respect to services undertaken for the joint benefit of the members of a group of controlled entities, as well as with respect to services performed by one member of the group exclusively for the benefit of another member of the group. Any allocations made shall be consistent with the relative benefits intended from the services, based upon the facts known at the time the services were rendered, and shall be made even if the potential benefits anticipated are not realized. No allocations shall be made if the probable benefits to the other members were so indirect or remote that unrelated parties would not have charged for such services. In general, allocations may be made if the service, at the time it was performed, related to the carrying on of an activity by another member or was intended to benefit another member, either in the member's overall operations or in its day-to-day activities. The principles of this paragraph (b)(2)(i) may be illustrated by the following examples in each of which it is assumed that X and Y are corporate members of the same group of controlled entities:

Example 1. X's International Division engages in a wide range of sales promotion activities. Although most of these activities are undertaken exclusively for the benefit of X's international operations, some are intended to jointly benefit both X and Y and others are undertaken exclusively for the benefit of Y. The district director may make an allocation to reflect an arm's length charge with respect to the activities undertaken for the joint benefit of X and Y consistent with the relative benefits intended as well as with respect to the services performed exclusively for the benefit of Y.

Example 2. X operates an international airline, and Y owns and operates hotels in several cities which are serviced by X. X, in conjunction with its advertising of the airline, often pictures Y's hotels and mentions Y's name. Although such advertising was primarily intended to benefit X's airline operations, it was reasonable to anticipate that

there would be substantial benefits to Y resulting from patronage by travelers who responded to X's advertising. Since an unrelated hotel operator would have been charged for such advertising, the district director may make an appropriate allocation to reflect an arm's length charge consistent with the relative benefits intended.

Example 3. Assume the same facts as in Example 2 except that X's advertising neither mentions nor pictures Y's hotels. Although it is reasonable to anticipate that increased air travel attributable to X's advertising will result in some benefit to Y due to increased patronage by air travelers, the district director will not make an allocation with respect to such advertising since the probable benefit to Y was so indirect and remote that an unrelated hotel operator would not have been charged for such advertising.

(ii) Allocations will generally not be made if the service is merely a duplication of a service which the related party has independently performed or is performing for itself. In this connection, the ability to independently perform the service (in terms of qualification and availability of personnel) shall be taken into account. The principles of this paragraph (b)(2)(ii) may be illustrated by the following examples, in each of which it is assumed that X and Y are corporate members of the same group of controlled entities:

Example 1. At the request of Y, the financial staff of X makes an analysis to determine the amount and source of the borrowing needs of Y. Y does not have personnel qualified to make the analysis, and it does not undertake the same analysis. The district director may make an appropriate allocation to reflect an arm's length charge for such analysis.

Example 2. Y, which has a qualified financial staff, makes an analysis to determine the amount and source of its borrowing needs. Its report, recommending a loan from a bank, is submitted to X. X's financial staff reviews the analysis to determine whether X should advise Y to reconsider its plan. No allocation should be made with respect to X's review.

(3) *Arm's length charge.* For the purpose of this paragraph an arm's length charge for services rendered shall be the amount which was charged or would have been charged for the same or similar services in independent transactions with or between unrelated parties under similar circumstances considering all relevant facts. However, except in the case of services which are an integral part of the business activity of either the member rendering the services or the member receiving the benefit of the services (as described in paragraph (b)(7) of this section) the arm's length charge shall be deemed equal to the costs or deductions incurred with respect to such services by the member or members rendering such services unless the taxpayer establishes a more appropriate charge under the standards set forth in the first sentence of this subparagraph. Where costs or deductions are a factor in applying the provisions of this paragraph adequate books and records must be maintained by taxpayers to permit verification of such costs or deductions by the Internal Revenue Service.

(4) *Costs or deductions to be taken into account*—(i) Where the amount of an arm's length charge for services is determined with reference to the costs or deductions incurred with respect to such services, it is necessary to take into account on some reasonable basis all the costs or deductions which are directly or indirectly related to the service performed.

(ii) Direct costs or deductions are those identified specifically with a particular service. These include, but are not limited to, costs or deductions for compensation, bonuses, and travel expenses attributable to employees directly engaged in performing such services, for material and supplies directly consumed in rendering such services, and for other costs such as the cost of overseas cables in connection with such services.

(iii) Indirect costs or deductions are those which are not specifically identified with a particular activity or service but which relate to the direct costs referred to in paragraph (b)(4)(ii) of this section. Indirect costs or deductions generally include costs or deductions with respect to utilities, occupancy, supervisory and clerical compensation, and other overhead burden of the department incurring the direct costs or deductions referred to in paragraph (b)(4)(ii) of this section. Indirect costs or deductions also generally include an appropriate share of the costs or deductions relating to supporting departments and other applicable general and administrative expenses to the

extent reasonably allocable to a particular service or activity. Thus, for example, if a domestic corporation's advertising department performs services for the direct benefit of a foreign subsidiary, in addition to direct costs of such department, such as salaries of employees and fees paid to advertising agencies or consultants, which are attributable to such foreign advertising, indirect costs must be taken into account on some reasonable basis in determining the amount of costs or deductions with respect to which the arm's length charge to the foreign subsidiary is to be determined. These generally include depreciation, rent, property taxes, other costs of occupancy, and other overhead costs of the advertising department itself, and allocations of costs from other departments which service the advertising department, such as the personnel, accounting, payroll, and maintenance departments, and other applicable general and administrative expenses including compensation of top management.

(5) *Costs and deductions not to be taken into account.* Costs or deductions of the member rendering the services which are not to be taken into account in determining the amount of an arm's length charge for services include—

(i) Interest expense on indebtedness not incurred specifically for the benefit of another member of the group;

(ii) Expenses associated with the issuance of stock and maintenance of shareholder relations; and

(iii) Expenses of compliance with regulations or policies imposed upon the member rendering the services by its government which are not directly related to the service in question.

(6) *Methods*—(i) Where an arm's length charge for services rendered is determined with reference to costs or deductions, and a member has allocated and apportioned costs or deductions to reflect arm's length charges by employing in a consistent manner a method of allocation and apportionment which is reasonable and in keeping with sound accounting practice, such method will not be disturbed. If the member has not employed a method of allocation and apportionment which is reasonable and in keeping with sound accounting practice, the method of allocating and apportioning costs or deductions for the purpose of determining the amount of arm's length charges shall be based on the particular circumstances involved.

(ii) The methods of allocation and apportionment referred to in this paragraph (b)(6) are applicable both in allocating and apportioning indirect costs to a particular activity or service (see paragraph (b)(4)(iii) of this section) and in allocating and apportioning the total costs (direct and indirect) of a particular activity or service where such activity or service is undertaken for the joint benefit of two or more members of a group (see paragraph (b)(2)(i) of this section). While the use of one or more bases may be appropriate under the circumstances, in establishing the method of allocation and apportionment, appropriate consideration should be given to all bases and factors, including, for example, total expenses, asset size, sales, manufacturing expenses, payroll, space utilized, and time spent. The costs incurred by supporting departments may be apportioned to other departments on the basis of reasonable overall estimates, or such costs may be reflected in the other departments' costs by means of application of reasonable departmental overhead rates Allocations and apportionments of costs or deductions must be made on the basis of the full cost as opposed to the incremental cost. Thus, if an electronic data processing machine, which is rented by the taxpayer, is used for the joint benefit of itself and other members of a controlled group, the determination of the arm's length charge to each member must be made with reference to the full rent and cost of operating the machine by each member, even if the additional use of the machine for the benefit of the other members did not increase the cost to the taxpayer.

(iii) Practices actually employed to apportion costs or expenses in connection with the preparation of statements and analyses for the use of management, creditors, minority shareholders, joint venturers, clients, customers, potential investors, or other parties or agencies in interest shall be considered by the district director. Similarly, in determining the extent to

which allocations are to be made to or from foreign members of a controlled group, practices employed by the domestic members of a controlled group in apportioning costs between themselves shall also be considered if the relationships with the foreign members of the group are comparable to the relationships between the domestic members of the group. For example, if, for purposes of reporting to public stockholders or to a governmental agency, a corporation apportions the costs attributable to its executive officers among the domestic members of a controlled group on a reasonable and consistent basis, and such officers exercise comparable control over foreign members of such group, such domestic apportionment practice will be taken into consideration in determining the amount of allocations to be made to the foreign members.

(7) *Certain services.* An arm's length charge shall not be deemed equal to costs or deductions with respect to services which are an integral part of the business activity of either the member rendering the services (referred to in this paragraph (b) as the renderer) or the member receiving the benefit of the services (referred to in this paragraph (b) as the recipient). Paragraphs (b)(7)(i) through (b)(7)(iv) of this section describe those situations in which services shall be considered an integral part of the business activity of a member of a group of controlled entities.

(i) Services are an integral part of the business activity of a member of a controlled group where either the renderer or the recipient is engaged in the trade or business of rendering similar services to one or more unrelated parties.

(ii) (A) Services are an integral part of the business activity of a member of a controlled group where the renderer renders services to one or more related parties as one of its principal activities. Except in the case of services which constitute a manufacturing, production, extraction, or construction activity, it will be presumed that the renderer does not render services to related parties as one of its principal activities if the cost of services of the renderer attributable to the rendition of services for the taxable year to related parties does not exceed 25 percent of the total costs or deductions of the renderer for the taxable year. Where the cost of services rendered to related parties is in excess of 25 percent of the total costs or deductions of the renderer for the taxable year or where the 25-percent test does not apply, the determination of whether the rendition of such services is one of the principal activities of the renderer will be based on the facts and circumstances of each particular case. Such facts and circumstances may include the time devoted to the rendition of the services, the relative cost of the services, the regularity with which the services are rendered, the amount of capital investment, the risk of loss involved, and whether the services are in the nature of supporting services or independent of the other activities of the renderer.

(B) For purposes of the 25-percent test provided in this paragraph (b)(7)(ii), the cost of services rendered to related parties shall include all costs or deductions directly or indirectly related to the rendition of such services including the cost of services which constitute a manufacturing, production, extraction, or construction activity; and the total costs or deductions of the renderer for the taxable year shall exclude amounts properly reflected in the cost of goods sold of the renderer. Where any of the costs or deductions of the renderer do not reflect arm's length consideration and no adjustment is made under any provision of the Internal Revenue Code to reflect arm's length consideration, the 25-percent test will not apply if, had an arm's length charge been made, the costs or deductions attributable to the renderer's rendition of services to related entities would exceed 25 percent of the total costs or deductions of the renderer for the taxable year.

(C) For purposes of the 25-percent test in this paragraph (b)(7)(ii), a consolidated group (as defined in this paragraph (b)(7)(ii)(C)) may, at the option of the taxpayer, be considered as the renderer where one or more members of the consolidated group render services for the benefit of or on behalf of a related party which is not a member of the consolidated group. In such case,

the cost of services rendered by members of the consolidated group to any related parties not members of the consolidated group, as well as the total costs or deductions of the members of the consolidated group, shall be considered in the aggregate to determine if such services constitute a principal activity of the renderer. Where a consolidated group is considered the renderer in accordance with this paragraph (b)(7)(ii)(C), the costs or deductions referred to in this paragraph (b)(7)(ii) shall not include costs or deductions paid or accrued to any member of the consolidated group. In addition to the preceding provisions of this paragraph (b)(7)(ii)(C), if part or all of the services rendered by a member of a consolidated group to any related party not a member of the consolidated group are similar to services rendered by any other member of the consolidated group to unrelated parties as part of a trade or business, the 25-percent test in this paragraph (b)(7)(ii) shall be applied with respect to such similar services without regard to this paragraph (b)(7)(ii)(C). For purposes of this paragraph (b)(7)(ii)(C), the term consolidated group means all members of a group of controlled entities created or organized within a single country and subjected to an income tax by such country on the basis of their combined income.

(iii) Services are an integral part of the business activity of a member of a controlled group where the renderer is peculiarly capable of rendering the services and such services are a principal element in the operations of the recipient. The renderer is peculiarly capable of rendering the services where the renderer, in connection with the rendition of such services, makes use of a particularly advantageous situation or circumstance such as by utilization of special skills and reputation, utilization of an influential relationship with customers, or utilization of its intangible property (as defined in §1.482–4(b)). However, the renderer will not be considered peculiarly capable of rendering services unless the value of the services is substantially in excess of the costs or deductions of the renderer attributable to such services.

(iv) Services are an integral part of the business activity of a member of a controlled group where the recipient has received the benefit of a substantial amount of services from one or more related parties during its taxable year. For purposes of this paragraph (b)(7)(iv), services rendered by one or more related parties shall be considered substantial in amount if the total costs or deductions of the related party or parties rendering services to the recipient during its taxable year which are directly or indirectly related to such services exceed an amount equal to 25 percent of the total costs or deductions of the recipient during its taxable year. For purposes of the preceding sentence, the total costs or deductions of the recipient shall include the renderers' costs or deductions directly or indirectly related to the rendition of such services and shall exclude any amounts paid or accrued to the renderers by the recipient for such services and shall also exclude any amounts paid or accrued for materials the cost of which is properly reflected in the cost of goods sold of the recipient. At the option of the taxpayer, where the taxpayer establishes that the amount of the total costs or deductions of a recipient for the recipient's taxable year are abnormally low due to the commencement or cessation of an operation by the recipient, or other unusual circumstances of a nonrecurring nature, the costs or deductions referred to in the preceding two sentences shall be the total of such amount for the 3-year period immediately preceding the close of the taxable year of the recipient (or for the first 3 years of operation of the recipient if the recipient had been in operation for less than 3 years as of the close of the taxable year in which the services in issue were rendered).

(v) The principles of paragraphs (b)(7)(i) through (iv) of this section may be illustrated by the following examples:

Example 1. Y is engaged in the business of selling merchandise and X, an entity related to Y, is a printing company regularly engaged in printing and mailing advertising literature for unrelated parties. X also prints circulars advertising Y's products, mails the circulars to potential customers of Y, and in addition, performs the art work involved in the preparation of the circulars. Since the

printing, mailing, and art work services rendered by X to Y are similar to the printing and mailing services rendered by X as X's trade or business, the services rendered to Y are an integral part of the business activity of X as described in paragraph (b)(7)(i) of this section.

Example 2. V, W, X, and Y are members of the same group of controlled entities. Each member of the group files a separate income tax return. X renders wrecking services to V, W, and Y, and, in addition, sells building materials to unrelated parties. The total costs or deductions incurred by X for the taxable year (exclusive of amounts properly reflected in the cost of goods sold of X) are $4 million. The total costs or deductions of X for the taxable year which are directly or indirectly related to the services rendered to V, W, and Y are $650,000. Since $650,000 is less than 25 percent of the total costs or deductions of X (exclusive of amounts properly reflected in the cost of goods sold of X) for the taxable year ($4,000,000 * 25% = $1,000,000), the services rendered by X to V, W, and Y will not be considered one of X's principal activities within the meaning of paragraph (b)(7)(ii) of this section.

Example 3. Assume the same facts as in *Example 2,* except that the total costs or deductions of X for the taxable year which are directly or indirectly related to the services rendered to V, W, and Y are $1,800,000. Assume in addition, that there is a high risk of loss involved in the rendition of the wrecking services by X, that X has a large investment in the wrecking equipment, and that a substantial amount of X's time is devoted to the rendition of wrecking services to V, W, and Y. Since $1,800,000 is greater than 25 percent of the total costs or deductions of X for the taxable year (exclusive of amounts properly reflected in the cost of goods sold of X), i.e., $1 million, the services rendered by X to V, W, and Y will not be automatically excluded from classification as one of the principal activities of X as in *Example 2,* and consideration must be given to the facts and circumstances of the particular case. Based on the facts and circumstances in this case, X would be considered to render wrecking services to related parties as one of its principal activities. Thus, the wrecking services are an integral part of the business activity of X as described in paragraph (b)(7)(ii) of this section.

Example 4. Z is a domestic corporation and has several foreign subsidiaries. Z and X, a domestic subsidiary of Z, have exercised the privilege granted under section 1501 to file a consolidated return and, therefore, constitute a *consolidated group* within the meaning of paragraph (b)(7)(ii)(C) of this section. Pursuant to paragraph (b)(7)(ii)(C) of this section, the taxpayer treats X and Z as the renderer. The sole function of X is to provide accounting, billing, communication, and travel services to the foreign subsidiaries of Z. Z also provides some other services for the benefit of its foreign subsidiaries. The total costs or deductions of X and Z related to the services rendered for the benefit of the foreign subsidiaries is $750,000. Of that amount, $710,000 represents the costs of X, which are X's total operating costs. The total costs or deductions of X and Z for the taxable year with respect to their operations (exclusive of amounts properly reflected in the cost of goods sold of X and Z) is $6,500,000. Since the total costs or deductions related to the services rendered to the foreign subsidiaries ($750,000) is less than 25 percent of the total costs or deductions of X and Z (exclusive of amounts properly reflected in the costs of goods sold of X or Z) in the aggregate ($6,500,000 * 25% = $1,625,000), the services rendered by X and Z to the foreign subsidiaries will not be considered one of the principal activities of X and Z within the meaning of paragraph (b)(7)(ii) of this section.

Example 5. Assume the same facts as in *Example 4,* except that all the communication services rendered for the benefit of the foreign subsidiaries are rendered by X and that Z renders communication services to unrelated parties as part of its trade or business. X is regularly engaged in rendering communication services to foreign subsidiaries and devotes a substantial amount of its time to this activity. The costs or deductions of X related to the rendition of the communication services to the foreign subsidiaries are $355,000. By application of the paragraph (b)(7)(ii)(C) of this section, the services provided by X and Z to related entities other than the communication services will not be considered one of the principal activities of X and Z. However, since Z renders communication services to unrelated parties as a part of its trade or business, the communication services rendered by X to the foreign subsidiaries will be subject to the provisions of paragraph (b)(7)(ii) of this section without regard to paragraph (b)(7)(ii)(C) of this section. Since the costs or deductions of X related to the rendition of the communication services ($355,000) are in excess of 25 percent of the total costs or deductions of X (exclusive of amounts properly reflected in the cost of goods sold of X) for the taxable year ($710,000 * 25% = $177,500), the determination of whether X renders the communication services as one of its principal activities will depend on the particular facts and circumstances. The given facts and circumstances indicate that X renders the communication services as one of its principal activities.

Example 6. X and Y are members of the same group of controlled entities. Y produces and sells product D. As a part of the production process, Y sends materials to X who converts the materials into component parts. This conversion activity constitutes

only a portion of X's operations. X then ships the component parts back to Y who assembles them (along with other components) into the finished product for sale to unrelated parties. Since the services rendered by X to Y constitute a manufacturing activity, the 25-percent test in paragraph (b)(7)(ii) of this section does not apply.

Example 7. X and Y are members of the same group of controlled entities. X manufactures product D for distribution and sale in the United States, Canada, and Mexico. Y manufactures product D for distribution and sale in South and Central America. Due to a breakdown of machinery, Y is forced to cease its manufacturing operations for a 1-month period. In order to meet demand for product D during the shutdown period, Y sends partially finished goods to X. X, for that period, completes the manufacture of product D for Y and ships the finished product back to Y. The costs or deductions of X related to the manufacturing services rendered to Y are $750,000. The total costs or deductions of X are $24,000,000. Since the services in issue constitute a manufacturing activity, the 25-percent test in paragraph (b)(7)(ii) of this section does not apply. However, under these facts and circumstances, i.e., the insubstantiality of the services rendered to Y in relation to X's total operations, the lack of regularity with which the services are rendered, and the short duration for which the services are rendered, X's rendition of manufacturing services to Y is not considered one of X's principal activities within the meaning of paragraph (b)(7)(ii) of this section.

Example 8. Assume the same facts as in *Example 7,* except that, instead of temporarily ceasing operations, Y requests assistance from X in correcting the defects in the manufacturing equipment. In response, X sends a team of engineers to discover and correct the defects without the necessity of a shutdown. Although the services performed by the engineers were related to a manufacturing activity, the services are essentially supporting in nature and, therefore, do not constitute a manufacturing, production, extraction, or construction activity. Thus, the 25-percent test in paragraph (b)(7)(ii) of this section applies.

Example 9. X is a domestic manufacturing corporation. Y, a foreign subsidiary of X, has decided to construct a plant in Country A. In connection with the construction of Y's plant, X draws up the architectural plans for the plant, arranges the financing of the construction, negotiates with various Government authorities in Country A, invites bids from unrelated parties for several phases of construction, and negotiates, on Y's behalf, the contracts with unrelated parties who are retained to carry out certain phases of the construction. Although the unrelated parties retained by X for Y perform the physical construction, the aggregate services performed by X for Y are such that they, in themselves, constitute a construction activity. Thus, the 25-percent test in paragraph (b)(7)(ii) of this section does not apply with respect to such services.

Example 10. X and Y are members of the same group of controlled entities. X is a finance company engaged in financing automobile loans. In connection with such loans it requires the borrower to have life insurance in the amount of the loan. Although X's borrowers are not required to take out life insurance from any particular insurance company, at the same time that the loan agreement is being finalized, X's employees suggest that the borrower take out life insurance from Y, which is an agency for life insurance companies. Since there would be a delay in the processing of the loan if some other company were selected by the borrower, almost all of X's borrowers take out life insurance through Y. Because of this utilization of its influential relationship with its borrowers, X is peculiarly capable of rendering selling services to Y and, since a substantial amount of Y's business is derived from X's borrowers, such selling services are a principal element in the operation of Y's insurance business. In addition, the value of the services is substantially in excess of the costs incurred by X. Thus, the selling services rendered by X to Y are an integral part of the business activity of a member of the controlled group as described in paragraph (b)(7)(iii) of this section.

Example 11. X and Y are members of the same group of controlled entities. Y is a manufacturer of product E. In past years product E has not always operated properly because of imperfections present in the finished product. X owns an exclusive patented process by which such imperfections can be detected and removed prior to sale of the product, thereby greatly increasing the marketability of the product. In connection with its manufacturing operations Y sends its products to X for inspection which involves utilization of the patented process. The inspection of Y's products by X is not one of the principal activities of X. However, X is peculiarly capable of rendering the inspection services to Y because of its utilization of the patented process. Since this inspection greatly increases the marketability of product E it is extremely valuable. Such value is substantially in excess of the cost incurred by X in rendition of such services. Because of the impact of the inspection on sales, such services are a principal element in the operations of Y. Thus, the inspection services rendered by X to Y are an integral part of the business activity of a member of the controlled group as described in paragraph (b)(7)(iii) of this section.

Example 12. Assume the same facts as in *Example 11* except that Y owns the patented process for detecting the imperfections. Y,

however, does not have the facilities to implement the inspection process. Therefore, Y sends its products to X for inspection which involves utilization of the patented process owned by Y. Since Y owns the patent, X is not peculiarly capable of rendering the inspection services to Y within the meaning of paragraph (b)(7)(iii) of this section.

Example 13. Assume the same facts as in *Example 12* except that X and Y both own interests in the patented process as a result of having developed the process pursuant to a bona fide cost sharing plan (within the meaning of §1.482–7T). Since Y owns the requisite interest in the patent, X is not peculiarly capable of rendering the inspection services to Y within the meaning of paragraph (b)(7)(iii) of this section.

Example 14. X and Y are members of the same group of controlled entities. X is a large manufacturing concern. X's accounting department has, for many years, maintained the financial records of Y, a distributor of X's products. Although X is able to render these accounting services more efficiently than others due to its thorough familiarity with the operations of Y, X is not peculiarly capable of rendering the accounting services to Y because such familiarity does not, in and of itself, constitute a particularly advantageous situation or circumstance within the meaning of paragraph (b)(7)(iii) of this section. Furthermore, under these circumstances, the accounting services are supporting in nature and, therefore, do not constitute a principal element in the operations of Y. Thus, the accounting services rendered by X to Y are not an integral part of the business activity of either X or Y within the meaning of paragraph (b)(7)(iii) of this section.

Example 15. (i) Corporations X, Y, and Z are members of the same group of controlled entities. X is a manufacturer, and Y and Z are distributors of X's products. X provides a variety of services to Y including billing, shipping, accounting, and other general and administrative services. During Y's taxable year, on several occasions, Z renders selling and other promotional services to Y. None of the services rendered to Y constitute one of the principal activities of any of the renderers within the meaning of paragraph (b)(7)(ii) of this section. Y's total costs and deductions for Y's taxable year (exclusive of amounts paid to X and Z for services rendered and amounts paid for goods purchased for resale) are $1,600,000. The total direct and indirect costs of X and Z for services rendered to Y during Y's taxable year are as follows:

Services provided by X:	
Billing	$50,000
Shipping	250,000
Accounting	150,000
Other	200,000
Services provided by Z:	
Selling	500,000
Total Costs	1,150,000

(ii) Since the total costs or deductions of X and Z related to the rendition of services to Y exceed the amount equal to 25 percent of the total costs or deductions of Y (exclusive of amounts paid to X and Z for the services rendered and amounts paid for goods purchased for resale) plus the total costs or deductions of X and Z related to the rendition of services to Y ($1,150,000 ÷ [$1,600,000 + $1,150,000] = 41.8%), the services rendered by X and Z to Y are substantial within the meaning of paragraph (b)(7)(iv) of this section. Thus, the services rendered by X and Z to Y are an integral part of the business activity of Y as described in paragraph (b)(7)(iv) of this section.

Example 16. Assume the same facts as in *Example 15,* except that the taxpayer establishes that, due to a major change in the operations of Y, Y's total costs or deductions for Y's taxable year were abnormally low. Y has always used the calendar year as its taxable year. Y's total costs and deductions for the 2 years immediately preceding the taxable year in issue (exclusive of amounts paid to X and Z for services rendered and amounts paid for goods purchased for resale) were $6 million and $6,200,000 respectively. The total direct and indirect costs of X and Z for services rendered to Y were $1,150,000 for each of the 3 years. Applying the same formula to the costs or deductions for the 3 years immediately preceding the close of the taxable year in issue, the costs or deductions of X and Z related to the rendition of services to Y (3 * $1,150,000=$3,450,000) amount to 20 percent of the sum of the total costs or deductions of Y (exclusive of amounts paid to X and Z for the services rendered and amounts paid for goods purchased for resale) plus the total costs or deductions of X and Z related to the rendition of services to Y ($3,450,000 $1,600,000 + $6,000,000 + $6,200,000 + $3,450,000=20%). If the taxpayer chooses to use the 3-year period, the services rendered by X and Z to Y are not substantial within the meaning of paragraph (b)(7)(iv) of this section. Thus, the services will not be an integral part of the business activity of a member of the controlled group as described in paragraph (b)(7)(iv) of this section.

(8) *Services rendered in connection with the transfer of property.* Where tangible or intangible property is transferred, sold, assigned, loaned, leased, or otherwise made available in any manner by one member of a group to another member of the group and services are rendered by the transferor to the transferee in connection with the transfer, the amount of any allocation that may

be appropriate with respect to such transfer shall be determined in accordance with the rules of paragraph (c) of this section, or §§1.482–3 or 1.482–4, whichever is appropriate and a separate allocation with respect to such services under this paragraph shall not be made. Services are rendered in connection with the transfer of property where such services are merely ancillary and subsidiary to the transfer of the property or to the commencement of effective use of the property by the transferee. Whether or not services are merely ancillary and subsidiary to a property transfer is a question of fact. Ancillary and subsidiary services could be performed, for example, in promoting the transaction by demonstrating and explaining the use of the property, or by assisting in the effective starting-up of the property transferred, or by performing under a guarantee relating to such effective starting-up. Thus, where an employee of one member of a group, acting under the instructions of his employer, reveals a valuable secret process owned by his employer to a related entity, and at the same time supervises the integration of such process into the manufacturing operation of the related entity, such services could be considered to be rendered in connection with the transfer, and, if so considered, shall not be the basis for a separate allocation. However, if the employee continues to render services to the related entity by supervising the manufacturing operation after the secret process has been effectively integrated into such operation, a separate allocation with respect to such additional services may be made in accordance with the rules of this paragraph.

(c) *Use of tangible property*—(1) *General rule*. Where possession, use, or occupancy of tangible property owned or leased by one member of a group of controlled entities (referred to in this paragraph as the owner) is transferred by lease or other arrangement to another member of such group (referred to in this paragraph as the user) without charge or at a charge which is not equal to an arm's length rental charge (as defined in paragraph (c)(2)(i) of this section) the district director may make appropriate allocations to properly reflect such arm's length charge. Where possession, use, or occupancy of only a portion of such property is transferred, the determination of the arm's length charge and the allocation shall be made with reference to the portion transferred.

(2) *Arm's length charge*—(i) *In general*. For purposes of paragraph (c) of this section, an arm's length rental charge shall be the amount of rent which was charged, or would have been charged for the use of the same or similar property, during the time it was in use, in independent transactions with or between unrelated parties under similar circumstances considering the period and location of the use, the owner's investment in the property or rent paid for the property, expenses of maintaining the property, the type of property involved, its condition, and all other relevant facts.

(ii) *Safe haven rental charge*. See §1.482–2(c)(2)(ii) (26 CFR Part 1 revised as of April 1, 1985), for the determination of safe haven rental charges in the case of certain leases entered into before May 9, 1986, and for leases entered into before August 7, 1986, pursuant to a binding written contract entered into before May 9, 1986.

(iii) *Subleases*—(A) Except as provided in paragraph (c)(2)(iii)(B) of this section, where possession, use, or occupancy of tangible property, which is leased by the owner (lessee) from an unrelated party is transferred by sublease or other arrangement to the user, an arm's length rental charge shall be considered to be equal to all the deductions claimed by the owner (lessee) which are attributable to the property for the period such property is used by the user. Where only a portion of such property was transferred, any allocations shall be made with reference to the portion transferred. The deductions to be considered include the rent paid or accrued by the owner (lessee) during the period of use and all other deductions directly and indirectly connected with the property paid or accrued by the owner (lessee) during such period. Such deductions include deductions for maintenance and repair, utilities, management and other similar deductions.

(B) The provisions of paragraph (c)(2)(iii)(A) of this section shall not apply if either—

(*1*) The taxpayer establishes a more appropriate rental charge under the general rule set forth in paragraph (c)(2)(i) of this section; or

(*2*) During the taxable year, the owner (lessee) or the user was regularly engaged in the trade or business of renting property of the same general type as the property in question to unrelated persons.

(d) *Transfer of property*. For rules governing allocations under section 482 to reflect an arm's length consideration for controlled transactions involving the transfer of property, see §§1.482–3 through 1.482–6.

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§ 1.482–3 Methods to determine taxable income in connection with a transfer of tangible property.

(a) *In general*. The arm's length amount charged in a controlled transfer of tangible property must be determined under one of the six methods listed in this paragraph (a). Each of the methods must be applied in accordance with all of the provisions of §1.482–1, including the best method rule of §1.482–1(c), the comparability analysis of §1.482–1(d), and the arm's length range of §1.482–1(e). The methods are—

(1) The comparable uncontrolled price method, described in paragraph (b) of this section;

(2) The resale price method, described in paragraph (c) of this section;

(3) The cost plus method, described in paragraph (d) of this section;

(4) The comparable profits method, described in §1.482–5;

(5) The profit split method, described in §1.482–6; and

(6) Unspecified methods, described in paragraph (e) of this section.

(b) *Comparable uncontrolled price method*—(1) *In general*. The comparable uncontrolled price method evaluates whether the amount charged in a controlled transaction is arm's length by reference to the amount charged in a comparable uncontrolled transaction.

(2) *Comparability and reliability considerations*—(i) *In general*. Whether results derived from applications of this method are the most reliable measure of the arm's length result must be determined using the factors described under the best method rule in §1.482–1(c). The application of these factors under the comparable uncontrolled price method is discussed in paragraph (b)(2)(ii) and (iii) of this section.

(ii) *Comparability*—(A) *In general*. The degree of comparability between controlled and uncontrolled transactions is determined by applying the provisions of §1.482–1(d). Although all of the factors described in §1.482–1(d)(3) must be considered, similarity of products generally will have the greatest effect on comparability under this method. In addition, because even minor differences in contractual terms or economic conditions could materially affect the amount charged in an uncontrolled transaction, comparability under this method depends on close similarity with respect to these factors, or adjustments to account for any differences. The results derived from applying the comparable uncontrolled price method generally will be the most direct and reliable measure of an arm's length price for the controlled transaction if an uncontrolled transaction has no differences with the controlled transaction that would affect the price, or if there are only minor differences that have a definite and reasonably ascertainable effect on price and for which appropriate adjustments are made. If such adjustments cannot be made, or if there are more than minor differences between the controlled and uncontrolled transactions, the comparable uncontrolled price method may be used, but the reliability of the results as a measure of the arm's length price will be reduced. Further, if there are material product differences for which reliable adjustments cannot be made, this method ordinarily will not provide a reliable measure of an arm's length result.

(B) *Adjustments for differences between controlled and uncontrolled transactions*. If there are differences between the controlled and uncontrolled transactions that would affect price, adjustments should be made to the price of the uncontrolled transaction according to the comparability provisions of §1.482–1(d)(2). Specific examples of the