

portion of such amount that is attributable to a gross valuation misstatement will be subject to the transactional penalty at the forty percent rate, but will not also be subject to net adjustment penalty at a twenty percent rate. The remaining amount is subject to the net adjustment penalty at the twenty percent rate, even if such amount is less than the lesser of five million dollars or ten percent of gross receipts.

(2) *Coordination of net section 482 adjustment subject to the net adjustment penalty and substantial valuation misstatements subject to the transactional penalty.* If the net section 482 adjustment exceeds twenty million dollars or 20 percent of gross receipts, the entire amount of the adjustment is subject to the net adjustment penalty at a forty percent rate. No portion of the adjustment is subject to the transactional penalty at a twenty percent rate.

(3) *Examples.* The following examples illustrate the principles of this paragraph (f):

Example 1. (i) Applying section 482, the Internal Revenue Service makes the following adjustments for the taxable year:

(1) Attributable to an adjustment that is 400 percent or more of the correct section 482 arm's length result	\$2,000,000
(2) Not a 200 or 400 percent adjustment	2,500,000
Total	4,500,000

(ii) The taxpayer has gross receipts of 75 million dollars after all section 482 adjustments. None of the adjustments is excluded under paragraph (d) (Amounts excluded from net section 482 adjustments) of this section, in determining the five million dollar or 10% of gross receipts test under section 6662(e)(1)(B)(ii). The net section 482 adjustment (4.5 million dollars) is less than the lesser of five million dollars or ten percent of gross receipts (\$75 million × 10% = \$7.5 million). Thus, there is no substantial valuation misstatement. However, the two million dollar adjustment is attributable to a gross valuation misstatement. Accordingly, the taxpayer may be subject to a penalty, under section 6662(h), equal to 40 percent of the underpayment of tax attributable to the gross valuation misstatement of two million dollars. The 2.5 million dollar adjustment is not subject to a penalty under section 6662(b)(3).

Example 2. The facts are the same as in *Example 1*, except the taxpayer has gross receipts of 40 million dollars. The net section 482 adjustment (\$4.5 million) is greater than the lesser of five million dollars or ten percent of gross receipts (\$40 million × 10% = \$4

million). Thus, the five million dollar or 10% of gross receipts test has been met. The two million dollar adjustment is attributable to a gross valuation misstatement. Accordingly, the taxpayer is subject to a penalty, under section 6662(h), equal to 40 percent of the underpayment of tax attributable to the gross valuation misstatement of two million dollars. The 2.5 million dollar adjustment is subject to a penalty under sections 6662(a) and 6662(b)(3), equal to 20 percent of the underpayment of tax attributable to the substantial valuation misstatement.

Example 3. (i) Applying section 482, the Internal Revenue Service makes the following transfer pricing adjustments for the taxable year:

(1) Attributable to an adjustment that is 400 percent or more of the correct section 482 arm's length result	\$6,000,000
(2) Not a 200 or 400 percent adjustment	15,000,000
Total	21,000,000

(ii) None of the adjustments are excluded under paragraph (d) (Amounts excluded from net section 482 adjustments) in determining the twenty million dollar or 20% of gross receipts test under section 6662(h). The net section 482 adjustment (21 million dollars) is greater than twenty million dollars and thus constitutes a gross valuation misstatement. Accordingly, the total adjustment is subject to the net adjustment penalty equal to 40 percent of the underpayment of tax attributable to the 21 million dollar gross valuation misstatement. The six million dollar adjustment will not be separately included for purposes of any additional penalty under section 6662.

(g) [Reserved]. For further guidance, see § 1.6662-6T(g).

[T.D. 8656, 61 FR 4880, Feb. 9, 1996; T.D. 8656, 61 FR 14248, Apr. 1, 1996; 62 FR 46877, Sept. 5, 1997, as amended by T.D. 9278, 71 FR 44518, Aug. 4, 2006]

§ 1.6662-6T Transactions between parties described in section 482 and net section 482 transfer price adjustments (temporary).

(a) through (d)(2)(ii)(A) [Reserved]. For further guidance, see § 1.6662-6(a) through (d)(2)(ii)(A).

(d)(2)(ii)(B) *Services cost method.* A taxpayer's selection of the services cost method for certain services, described in § 1.482-9T(b), and its application of that method to a controlled services transaction will be considered reasonable for purposes of the specified method requirement only if the taxpayer reasonably allocated and apportioned costs in accordance with § 1.482-

9T(k), reasonably concluded that the controlled services transaction meets the conditions of §1.482-9T(b)(3), and reasonably concluded that the controlled services transaction is not described in §1.482-9T(b)(2). Whether the taxpayer's conclusion was reasonable must be determined from all the facts and circumstances. The factors relevant to this determination include those described in paragraph (d)(2)(ii)(A) of this section, to the extent applicable.

(d)(2)(iii)(A) through (d)(2)(iii)(B)(3) [Reserved]. For further guidance, see §1.6662-6(d)(2)(iii)(A) through (d)(2)(iii)(B)(3).

(d)(2)(iii)(B)(4) A description of the method selected and an explanation of why that method was selected, including an evaluation of whether the regulatory conditions and requirements for application of that method, if any, were met;

(d)(2)(iii)(B)(5) [Reserved]. For further guidance, see §1.6662-6(d)(2)(iii)(B)(5).

(d)(2)(iii)(B)(6) A description of the controlled transactions (including the terms of sale) and any internal data used to analyze those transactions. For example, if a profit split method is applied, the documentation must include a schedule providing the total income, costs, and assets (with adjustments for different accounting practices and currencies) for each controlled taxpayer participating in the relevant business activity and detailing the allocations of such items to that activity. Similarly, if a cost-based method (such as the cost plus method, the services cost method for certain services, or a comparable profits method with a cost-based profit level indicator) is applied, the documentation must include a description of the manner in which relevant costs are determined and are allocated and apportioned to the relevant controlled transaction.

(d)(2)(iii)(B)(7) through (f) [Reserved]. For further guidance, see §1.6662-6(d)(2)(iii)(B)(7) through (f).

(g) *Effective date*—(1) This section is generally effective February 9, 1996. However, taxpayers may elect to apply this section to all open taxable years beginning after December 31, 1993.

(2)(i) The provisions of paragraphs (d)(2)(ii)(B), (d)(2)(iii)(B)(4) and (d)(2)(iii)(B)(6) of this section are applicable for taxable years beginning after December 31, 2006.

(ii) *Election to apply regulation to earlier taxable years.* A person may elect to apply the provisions of this section to earlier taxable years in accordance with the rules set forth in §1.482-9T(n)(2) of this chapter.

(iii) *Expiration date.* The applicability of §1.6662-6T expires on or before July 31, 2009.

[T.D. 9278, 71 FR 44518, Aug. 4, 2006; 71 FR 76904, Dec. 22, 2006]

§ 1.6662-7 Omnibus Budget Reconciliation Act of 1993 changes to the accuracy-related penalty.

(a) *Scope.* The Omnibus Budget Reconciliation Act of 1993 made certain changes to the accuracy-related penalty in section 6662. This section provides rules reflecting those changes.

(b) *No disclosure exception for negligence penalty.* The penalty for negligence in section 6662(b)(1) may not be avoided by disclosure of a return position.

(c) *Disclosure standard for other penalties is reasonable basis.* The penalties for disregarding rules or regulations in section 6662(b)(1) and for a substantial understatement of income tax in section 6662(b)(2) may be avoided by adequate disclosure of a return position only if the position has at least a reasonable basis. See §1.6662-3(c) and §§1.6662-4(e) and (f) for other applicable disclosure rules.

(d) *Reasonable basis.* For purposes of §§1.6662-3(c) and 1.6662-4(e) and (f) (relating to methods of making adequate disclosure), the provisions of §1.6662-3(b)(3) apply in determining whether a return position has a reasonable basis.

[T.D. 8617, 60 FR 45665, Sept. 1, 1995, as amended by T.D. 8790, 63 FR 66435, Dec. 2, 1998]

§ 1.6664-0 Table of contents.

This section lists the captions in §§1.6664-1 through 1.6664-4T.

§ 1.6664-1 *Accuracy-related and fraud penalties; definitions and special rules.*

(a) In general.

(b) Effective date.