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.

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(a) In general.
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(1) In general.

(2) Reasonable cause and good faith exception to section 6662 penalties.

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(3) Qualified amended returns.

§ 1.6664–2 Underpayment.

(a) Underpayment defined.

(b) Amount of income tax imposed.

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(1) Defined.

(2) Effect of qualified amended return.

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(5) Examples.

(d) Amounts not so shown previously assessed (or collected without assessment).

(e) Rebates.

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§ 1.6664–3 Ordering rules for determining the total amount of penalties imposed.

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§ 1.6664–4 Reasonable cause and good faith exception to section 6662 penalties.

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(1) In general.

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(c) Reliance on opinion or advice.

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(f) Special rules for substantial understatement penalty attributable to tax shelter items of corporations.

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(i) Minimum requirements.

(A) Authority requirement.

(B) Belief requirement.

(ii) Legal justification defined.

(3) Minimum requirements not dispositive.

(4) Other factors.

(g) Transactions between persons described in section 482 and net section 482 transfer price adjustments. [Reserved]

(h) Valuation misstatements of charitable deduction property.

(1) In general.

(2) Definitions.

(i) Charitable deduction property.

(ii) Qualified appraisal.

(iii) Qualified appraiser.

(3) Special rules.

§ 1.6664–4T Reasonable cause and good faith exception to section 6662 penalties

(a)–(c) [Reserved]

(d) Transactions between persons described in section 482 and net section 482 transfer price adjustments.

[T.D. 8381, 56 FR 67505, Dec. 31, 1991, as amended by T.D. 8519, 59 FR 4799, Feb. 2, 1994; T.D. 8617, 60 FR 45666, Sept. 1, 1995; T.D. 8656, 61 FR 4885, Feb. 9, 1996; T.D. 8790, 63 FR 66435, Dec. 2, 1998; T.D. 9109, 68 FR 75128, Dec. 30, 2003; T.D. 9309, 72 FR 903, Jan. 9, 2007]

§ 1.6664–1 Accuracy-related and fraud penalties; definitions, effective date and special rules.

(a) *In general.* Section 6664(a) defines the term ''underpayment'' for purposes of the accuracy-related penalty under section 6662 and the fraud penalty under section 6663. The definition of ''underpayment'' of income taxes imposed under subtitle A is set forth in § 1.6664–2. Ordering rules for computing the total amount of accuracy-related and fraud penalties imposed with respect to a return are set forth in § 1.6664–3. Section 6664(c) provides a reasonable cause and good faith exception to the accuracy-related penalty. Rules relating to the reasonable cause and good faith exception are set forth in § 1.6664–4.

(b) *Effective date*—(1) *In general.* Sections 1.6664–1 through 1.6664–3 apply to returns the due date of which (determined without regard to extensions of time for filing) is after December 31, 1989.

(2) *Reasonable cause and good faith exception to section 6662 penalties.* (i) *For returns due after September 1, 1995.* Section 1.6664–4 applies to returns the due date of which (determined without regard to extensions of time for filing) is after September 1, 1995. Except as provided in the last sentence of this paragraph (b)(2), § 1.6664–4 (as contained in