

SUPPORTING STATEMENT
(INTL-21-91 - TD 8656)

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

Section 6662(e) of the Internal Revenue Code ("Code") defines a substantial valuation misstatement under chapter 1 of the Code for purposes of the accuracy-related penalty imposed under section 6662(a). The penalty is imposed on underpayments of tax, including those caused by a substantial valuation misstatement for transactions subject to section 482. Section 6662(e)(3)(B) provides, in general, that certain adjustments are excluded in determining whether the penalty applies if a taxpayer demonstrates that it followed certain requirements in analyzing its transfer pricing, documented that analysis, and provided that documentation to the Internal Revenue Service upon request. Consistent with the statute, these regulations require that taxpayers contemporaneously document their transfer pricing analysis, notify the Service of the use of certain methods for determining an arm's length price, and provide that documentation to the Service upon request.

2. USE OF DATA

The information will be used to administer and enforce the Internal Revenue Code.

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

IRS Publications, Regulations, Notices and Letters are to be electronically enabled on an as practicable basis in accordance with the IRS Reform and Restructuring Act of 1998.

4. EFFORTS TO IDENTIFY DUPLICATION

We have attempted to eliminate duplication within the agency wherever possible.

5. METHODS TO MINIMIZE BURDEN ON SMALL BUSINESSES OR OTHER SMALL ENTITIES

These regulations provide that a substantial valuation misstatement may arise under two circumstances. These regulations minimize the burden on small businesses or other

small entities under one of these circumstances by providing, consistent with section 6662(e)(1)(B)(ii), that a substantial valuation misstatement exists only if the taxpayer has a net section 482 adjustment that exceeds the lesser of five million dollars or ten percent of gross receipts. These regulations minimize the burden on small businesses or other small entities by recognizing that the size of transactions are relevant in determining the extent of analysis and documentation required to avoid the penalty.

6. CONSEQUENCES OF LESS FREQUENT COLLECTION ON FEDERAL PROGRAMS OR POLICY ACTIVITIES

Not applicable.

7. SPECIAL CIRCUMSTANCES REQUIRING DATA COLLECTION TO BE INCONSISTENT WITH GUIDELINES IN 5 CFR 1320.5(d)(2)

Not applicable.

8. CONSULTATION WITH INDIVIDUALS OUTSIDE OF THE AGENCY ON AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, CLARITY OF INSTRUCTIONS AND FORMS, AND DATA ELEMENTS

On January 21, 1993, a notice of proposed rulemaking was published in the **Federal Register**. On February 2, 1994, the January 21, 1993, notice of proposed rulemaking was withdrawn and was reissued as a new notice of proposed rulemaking by cross-reference to temporary regulations. On July 8, 1994, a new cross-referenced notice of proposed rulemaking accompanying the temporary regulation was published. On February 9, 1996, the final regulations (TD 8656) were published in the **Federal Register**.

We received no comments during the comment period in response to the **Federal Register Notice** (77 FR 37099), dated **June 20, 2012**.

9. EXPLANATION OF DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS

Not applicable.

10. ASSURANCE OF CONFIDENTIALITY OF RESPONSES

Generally, tax returns and tax return information are confidential as required by 26 USC 6103.

11. JUSTIFICATION OF SENSITIVE QUESTIONS

Not applicable.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

Under section 1.6662-6(d) of the regulations, an amount is excluded from the penalty if certain requirements are met and a taxpayer maintains documentation of how a transfer price was determined. These amendments to the existing regulations under section 6662(e) clarify the documentation and reporting requirements in two specific situations--lump sum payments for intangibles and profit split methods.

The estimated annual burden per recordkeeper varies from 5 hours to 15 hours, depending on individual circumstances, with an estimated average of 10 hours. The estimated number of recordkeepers is 2,000. Accordingly, the estimated total annual recordkeeping burden is 20,000 hours.

There are three reporting requirements in §§1.6662-6(d)(2)(iii)(D) and (d)(3)(iii)(C). If a profit split method or an unspecified method is used to determine an arm's length price, the use of the method must be disclosed on a statement attached to a timely filed U.S. tax return. The purpose for this disclosure requirement is to alert the Service to the use of methods which are potentially less reliable in determining an arm's length result. If consideration for the controlled transfer of an intangible is in the form of a lump sum payment, that fact must be disclosed on a timely filed U.S. income tax return for each taxable year throughout the useful life of the intangible. The purpose for this requirement is to ensure that a lump sum payment is no less than the amount required under the "commensurate with income" standard of I.R.C. section 482. The annual number of respondents making such disclosures is estimated to be 500, one response per respondent. It is anticipated that each response will take fifteen minutes, and that the total annual burden will thus be 125 hours.

Estimates of the annualized cost to respondents for the hour burdens shown are not available at this time.

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

As suggested by OMB, our **Federal Register Notice** dated **June 20, 2012**, requested public comments on estimates of cost burden that are not captured in the estimates of burden hours, i.e., estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. However, we did not receive any response from taxpayers on this subject. As a result, estimates of the cost burdens are not available at this time.

14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

Not applicable.

15. REASONS FOR CHANGE IN BURDEN

There is no change in the paperwork burden previously approved by OMB. We are making this submission to renew the OMB approval.

16. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION

Not applicable.

17. REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPRIATE

We believe that displaying the OMB expiration date is inappropriate because it could cause confusion by leading taxpayers to believe that the regulation sunsets as of the expiration date. Taxpayers are not likely to be aware that the Service intends to request renewal of the OMB approval and obtain a new expiration date before the old one expires.

18. EXCEPTIONS TO THE CERTIFICATION STATEMENT ON OMB FORM 83-I

Not applicable.

Note: The following paragraph applies to all of the collections of information in this submission:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the

administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

OMB EXPIRATION DATE

We believe the public interest will be better served by not printing an expiration date on the form(s) in this package.

Printing the expiration date on the form will result in increased costs because of the need to replace inventories that become obsolete by passage of the expiration date each time OMB approval is renewed. Without printing the expiration date, supplies of the form could continue to be used.

The time period during which the current edition of the form(s) in this package will continue to be usable cannot be predicted. It could easily span several cycles of review and OMB clearance renewal. In addition, usage fluctuates unpredictably. This makes it necessary to maintain a substantial inventory of forms in the supply line at all times. This includes supplies owned by both the Government and the public. Reprinting of the form cannot be reliably scheduled to coincide with an OMB approval expiration date. This form may be privately printed by users at their own expense. Some businesses print complex and expensive marginally punched continuous versions, their expense, for use in their computers. The form may be printed by commercial printers and stocked for sale. In such cases, printing the expiration date on the form could result in extra costs to the users.

Not printing the expiration date on the form(s) will also avoid confusion among taxpayers who may have identical forms with different expiration dates in their possession.

For the above reasons we request authorization to omit printing the expiration date on the form(s) in this package.