

## Application of the Simplified and Streamlined Approach under Section 482

NOTICE 2025-04

### SECTION 1. PURPOSE

The purpose of this notice is to announce that the Department of the Treasury (“Treasury Department”) and the Internal Revenue Service (“IRS”) intend to issue proposed regulations that, for purposes of applying section 482, provide a new method for pricing certain controlled transactions involving baseline marketing and distribution activities. The approach for pricing these activities, referred to herein as the simplified and streamlined approach (“SSA”), is described in a report of the Organization for Economic Cooperation and Development (“OECD”) titled, “Pillar One – Amount B: Inclusive Framework on BEPS”<sup>1</sup> and published on February 19, 2024 (the “Report”). Because some aspects of the SSA may require updating over time with respect to the economic analysis that underlies the SSA (see section 5.4 of the Report), some aspects of the SSA may be addressed more appropriately in sub-regulatory guidance (such as, for example, a revenue procedure) that would be incorporated by reference into the regulations. The Treasury Department and the IRS expect that the proposed

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<sup>1</sup> Available at [https://www.oecd.org/en/publications/pillar-one-amount-b\\_21ea168b-en/full-report.html](https://www.oecd.org/en/publications/pillar-one-amount-b_21ea168b-en/full-report.html) (last accessed Dec.16, 2024).

regulations would not substantively diverge from any aspect of the Report. Therefore, while this notice does not restate or address every element of the Report, the Treasury Department and IRS intend the proposed regulations to implement the substance of the Report in its entirety.

This notice also provides guidance concerning application of the SSA to in-scope transactions undertaken by parties subject to U.S. tax with respect to those transactions before issuance of those proposed regulations. As discussed in sections 3.01 and 6.02 of this notice, U.S. taxpayers may rely on the SSA, as set forth in the Report (as supplemented by the Statements, described in section 2.02 of this notice), and subject to the rules described in sections 3 and 4 of this notice, for their U.S. tax reporting for taxable years beginning on or after January 1, 2025, and before proposed regulations are published in the Federal Register.

## SECTION 2. BACKGROUND

### .01 Section 482

Section 482 of the Internal Revenue Code permits the Commissioner of the IRS (“Commissioner”) to make allocations necessary to clearly reflect income or prevent tax avoidance with respect to controlled transactions. See also Treas. Reg. § 1.482-1(a)(1) (first sentence). The authority to make adjustments under section 482 is broad. For example, the Commissioner may make such adjustments with respect to transactions that otherwise qualify for nonrecognition under other provisions of the Code (see, e.g., Treas. Reg. § 1.482-1(f)(1)(iii)). For adjustments under section 482 to which the arm’s length standard applies, that standard is set forth in Treasury Regulation section 1.482-1(b). In addition to establishing the arm’s length standard under section 482 through

regulations, the Treasury Department and IRS have also promulgated detailed guidance for the application of the arm's length standard with respect to specific types of transactions. See Treas. Reg. §§ 1.482-2 through 1.482-9. That guidance includes simplification measures, including the safe haven interest rate under Treasury Regulation section 1.482-2(a)(2)(iii) and the services cost method under Treasury Regulation section 1.482-9(b).

## .02 The Development of the SSA

In an increasingly globalized economy, multinational enterprises manage extensive value chains across multiple jurisdictions that frequently involve baseline marketing and distribution activities. Disputes regarding the pricing of these activities can impose significant financial and compliance burdens on taxpayers and significant administrative burdens on tax authorities, and the costs of such disputes are sometimes disproportionate to the amounts at stake and the difficulty of the pricing challenges. For some jurisdictions, these problems can be exacerbated when tax administrations are under-resourced. The Report addresses these concerns by providing guidance designed to simplify and streamline the application of transfer pricing rules for baseline marketing and distribution activities.

The SSA is similar to the comparable profits method under Treasury Regulation sections 1.482-3(a)(4), 1.482-5, and 1.482-9(a)(5) and (f) (referred to in the Report as the transactional net margin method as that method is known in the Guidelines). Like the safe haven interest rate and the services cost method, the SSA is a simplification measure that reflects a carefully balanced tradeoff between reliability and administrability. However, unlike those other simplification measures, the SSA

determines a return based on comparables and is sensitive to material factual differences between the comparables and tested parties. As a result, the SSA is expected to closely approximate the result under the best method in most cases, and material differences in the results (under the SSA versus the best method), if they occur, are further expected to be minimal and uncommon. The SSA aims to alleviate administrative burdens, reduce compliance costs, reduce the likelihood of lengthy, expensive, and unnecessary cross-border tax disputes, and resolve more efficiently any disputes that nonetheless arise, thereby increasing tax certainty for both tax administrations and taxpayers. Accordingly, to the extent that the SSA may be less reliable than the best method in some cases, that reduction in reliability is expected to be modest and offset by the benefits of simplification and streamlining arising from the SSA.

The guidance in the Report regarding “Special considerations for baseline distribution activities” has been incorporated into the OECD Transfer Pricing Guidelines for Multinational Enterprises<sup>2</sup> (the “Guidelines”) as an Annex to Chapter IV. See Report, p.5 (first paragraph). The Report was subsequently supplemented by two statements on June 17, 2024, the “Statement on the definitions of qualifying jurisdiction within the meaning of section 5.2 and section 5.3 of the simplified and streamlined approach”<sup>3</sup> and the “Statement on the definition of covered jurisdiction for the Inclusive Framework

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<sup>2</sup> Available at [https://www.oecd.org/en/publications/oecd-transfer-pricing-guidelines-for-multinational-enterprises-and-tax-administrations-2022\\_0e655865-en.html](https://www.oecd.org/en/publications/oecd-transfer-pricing-guidelines-for-multinational-enterprises-and-tax-administrations-2022_0e655865-en.html) (last accessed Dec. 16, 2024).

<sup>3</sup> Available at [https://www.oecd.org/content/dam/oecd/en/publications/support-materials/2024/02/pillar-one-amount-b\\_41a41e1e/statement-qualifying-jurisdiction-definitions-section-5-2-section-5-3-simplified-streamlined-approach.pdf](https://www.oecd.org/content/dam/oecd/en/publications/support-materials/2024/02/pillar-one-amount-b_41a41e1e/statement-qualifying-jurisdiction-definitions-section-5-2-section-5-3-simplified-streamlined-approach.pdf) (last accessed Dec. 16, 2024).

political commitment on Amount B”<sup>4</sup> (collectively the “Statements”). The former Statement provides text that has been incorporated into the Guidelines to replace placeholder definitions in the Report. The latter Statement clarifies the Introduction of the Report.<sup>5</sup>

## SECTION 3. IMPLEMENTATION OF THE SSA

### .01 General Overview

This section 3 provides an overview of what transactions may be within the scope of the SSA, in general, as well as the rules that future regulations would provide for when and how the SSA can be applied to such transactions for U.S. tax purposes.

The Report states that every jurisdiction may choose whether to implement the SSA. A jurisdiction that implements the SSA may choose from two options. Under Option 1, the SSA can apply only if, among other considerations, a taxpayer elects for it to apply. Under Option 2, a taxpayer can elect to apply the SSA as under Option 1, but the tax administration of the Distributor Country that has implemented the SSA also has the right to apply the SSA even if the taxpayer does not elect to apply it.

Under both options, taxpayers retain flexibility when structuring their transactions to fall within or outside of the scope of the SSA. For example, if the United States were to promulgate final rules consistent with the SSA, U.S. federal income tax principles

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<sup>4</sup> Available at [https://www.oecd.org/content/dam/oecd/en/publications/support-materials/2024/02/pillar-one-amount-b\\_41a41e1e/statement-covered-jurisdiction-definition-inclusive-framework-commitment-amount-b.pdf](https://www.oecd.org/content/dam/oecd/en/publications/support-materials/2024/02/pillar-one-amount-b_41a41e1e/statement-covered-jurisdiction-definition-inclusive-framework-commitment-amount-b.pdf) (last accessed Dec. 16, 2024).

<sup>5</sup> Because a version of the Guidelines containing the content of the Report and supplemented by the Statements has not been published as of the publication of this notice (the current version of the Guidelines was published in January 2022), references herein to the contents of the Report and Statements are made to those latter documents directly.

would apply in evaluating the substance and form of the relevant transactions under all facts and circumstances for the purpose of determining whether such transactions are in scope. As is always the case under general U.S. federal income tax principles, before applying the section 482 regulations to determine whether a transfer price with respect to a purported controlled transaction is arm's length, it would first need to be determined whether a controlled transaction has occurred and, if so, what the terms of that transaction are. This analysis is required regardless of whether the relevant transactions are the same as transactions that occurred before the adoption of the SSA, or whether a taxpayer has restructured or otherwise purported to change the nature or terms of its distribution activities in order to come within the scope of the SSA. Similarly, U.S. tax rules would apply in requiring arm's length compensation for any controlled transactions that occur in connection with a restructuring, regardless of whether such transactions accomplish the restructuring itself or are ongoing following the restructuring.

The Treasury Department and the IRS intend to issue proposed regulations that, at minimum, are consistent with the Option 1 version of the SSA, which would permit taxpayers that are subject to U.S. tax with respect to in-scope transactions (that is, both U.S. Distributors and U.S. Related Suppliers) to elect (as described in section 4.06 of this notice) to apply the SSA for taxable years beginning on or after January 1, 2025. The Treasury Department and the IRS continue to consider whether proposed regulations should also permit the IRS to apply the SSA to in-scope transactions consistent with Option 2.

Section 5 of this notice contains a list of defined terms. Terms used in this notice that are not defined in section 5 and that are also used in the Report have the same meaning as that provided in the Report. For purposes of this notice, references to the Commissioner shall be to the director of field operations or other applicable delegate.

#### .02 Qualification for Application of the SSA

For U.S. taxpayers, the process of applying the SSA with respect to a controlled transaction would involve several key steps:

(1) First, the controlled transaction must fit within a category of qualifying transactions.

(2) Second, if the transaction is a qualifying transaction, it must also be an in-scope transaction. For purposes of determining whether a qualifying transaction is also an in-scope transaction under section 482, the upper bound of the operating expenses-to-revenues scoping criterion in paragraph 13.b. of the Report is 30% if (a) the Distributor is a U.S. Distributor or (b) the Distributor Country has not adopted the SSA. If the Distributor is a non-U.S. Distributor, and the Distributor Country has adopted the SSA, then the upper bound is the upper bound specified by the law of the Distributor Country, but no lower than 20% and no higher than 30%.

(3) Third, if the qualifying transaction is determined to be an in-scope transaction, then for purposes of applying the SSA for U.S. law, an election would need to be made as described in section 4.06 of this notice.

(4) Fourth, the taxpayer must maintain permanent books of account and records that are adequate to permit verification by the Commissioner that the controlled transactions with respect to which the election is made are in-scope transactions and

must maintain sufficient documentation to allow verification that the taxpayer properly determined its income under the SSA. See the documentation requirements in section 4.07, below, which apply for purposes of Treasury Regulation section 1.6662-6.

#### .03 Application of the SSA to In-Scope Transactions

If it is established that the controlled transaction is an in-scope transaction and that an election has been made, then the appropriate return to the tested party is determined under the SSA by applying the guidance in section 5 of the Report. The following paragraphs clarify the guidance in section 5 of the Report for purposes of applying the SSA for U.S. tax purposes.

##### (1) Identification of Relevant Matrix Cell

(a) In general, under section 5.1 of the Report, a return-on-sales percentage for the Distributor is determined mechanically by reference to a pricing matrix (derived from the results of a global dataset of comparables), the columns of which correspond to three industry groupings, and the rows of which correspond to various net operating asset intensities and operating expense intensities. See also page 12 of the Report for definitions of those terms. For purposes of identifying the applicable column of the matrix under paragraph 47.a. of the Report with respect to an in-scope transaction, if a sale could be categorized under more than one industry grouping, the more specific grouping must be used.

(b) Paragraph 47.b. of the Report requires identification of the applicable row of the matrix by reference to different levels of net operating asset intensity and operating expense intensity. Paragraphs 47.c. and 48 of the Report, in combination, determine the applicable range by first identifying the intersection of the column and row identified



under paragraphs 47.a. and 47.b., respectively, and then adding 0.5 to the return-on-sales percentage specified in the relevant matrix cell to determine the upper bound, and subtracting 0.5 from the specified percentage to determine the lower bound of the range. The range so determined applies pursuant to the rules set forth in this section 3.03(1)(b); therefore, the arm's length range and interquartile range concepts set forth in Treasury Regulation section 1.482-1(e) do not apply under the SSA. Subject to sections 5.2 and 5.3 of the Report (as explained further below), if the tested party's reported return-on-sales percentage falls within that range, then no adjustment will be made by the tax administration; if it falls outside that range, then an adjustment to the transfer price may be made by the tax administration as necessary to cause the reported return-on-sales percentage to become equal to the return-on-sales percentage specified in the applicable matrix cell as identified under paragraph 47.c. See ¶ 50 of the Report. For example, assume a Distributor elects to apply the SSA and reports income consistent with a return on sales of 3.3% based on its determination that the applicable industry grouping is group 2 under paragraph 47.a. and the applicable factor intensity row is row C under paragraph 47.b., which intersect at the matrix cell that indicates a 3% return on sales and a range of 2.5%-3.5%. However, on audit the tax administration determines that while the applicable factor intensity row is C, the applicable industry grouping is group 1 instead of group 2, and therefore the pricing matrix return is 2.5% with a range under paragraph 47.c. of 2%-3%. Under paragraph 50, the tax administration may make an adjustment to reduce the Distributor's return on sales to the appropriate pricing matrix cell return of 2.5%.

## (2) Operating Expense Cross-Check

(a) After the return-on-sales percentage has been determined under section 5.1 of the Report—that is, either the reported percentage (if it was within the range) or the adjusted percentage (if the reported percentage was outside the range)—an operating expense cross-check mechanism, as provided in section 5.2 of the Report, is used to ensure that the application of the SSA under section 5.1 remains appropriate with regard to implied returns on operating expenses. Table 5.2 of the Report provides applicable return-on-operating expense “cap-and-collar” ranges by net operating asset intensity of the tested party to establish an upper and lower bound, respectively, and ensure appropriate results for earnings before interest and taxes (“EBIT”)-to-operating expenses ratios. If the equivalent return on operating expenses derived from the return-on-sales percentage determined under section 5.1 falls above the cap rate, paragraph 52.d. of the Report requires adjusting such return-on-sales percentage downward so that the EBIT-to-operating expenses ratio is lowered until it equals the cap rate, to prevent excess profitability from being attributed to lower-risk, routine functions. Conversely, if the equivalent return on operating expenses derived from such return-on-sales percentage falls below the collar rate, an upward adjustment must be made to increase EBIT and, thus, the return-on-sales percentage, so that the EBIT-to-operating expenses ratio is increased to the collar rate to prevent under-remuneration of such activities.

(b) For this purpose, there are two sets of cap rates—alternative cap rates that apply only when the Distributor Country is a qualifying jurisdiction and default cap rates that apply in all other cases. Solely for purposes of the alternative cap rates under section 5.2 of the Report, “qualifying jurisdiction” means a jurisdiction that is classified

by the World Bank Group as low income, lower-middle income, or upper-middle income based on the latest available World Bank Group country classifications by income level (hereinafter “section 5.2 qualifying jurisdictions”). See section 3.03(4) of this notice.

(c) Building on the prior example in section 3.03(1)(b) of this notice, if the reported return-on-sales percentage of 3.3% was outside the range and, thus, adjusted to 2.5% under section 5.1 of the Report, and if section 5.2 of the Report requires a further adjustment, such further adjustment is made to the 2.5% return-on-sales percentage that was determined after application of the range under section 5.1. (Note: if the reported return-on-sales percentage had been 2.7% and, therefore, had been within the range specified in paragraph 48, then there would have been no adjustment under section 5.1, and the starting point for the adjustment under section 5.2 would have been 2.7%). In the case of an adjustment under section 5.2, whether the adjusted return-on-sales percentage falls within the range described and applied in section 5.1 is not relevant.

### (3) Data Availability Mechanism for Qualifying Jurisdictions

(a) Finally, the return-on-sales percentage determined under section 5.1 of the Report (and then adjusted, if necessary, under section 5.2 of the Report), may require a separate adjustment under the data availability mechanism of section 5.3 of the Report, which provides an additional return for a Distributor located in a qualifying jurisdiction. Solely for purposes of section 5.3 and subject to the following sentence, “qualifying jurisdiction” means jurisdictions (other than members of the European Union) that have both (i) a publicly available long term sovereign credit rating of BBB+ (or equivalent) or lower from a recognized independent credit rating agency, and (ii) fewer than five

comparables in the global dataset (hereinafter “section 5.3 qualifying jurisdiction”). In the case of a jurisdiction that does not have a long term sovereign credit rating from a recognized independent credit rating agency but has fewer than five comparables in the global dataset, it will nevertheless be regarded as a section 5.3 qualifying jurisdiction if it is classified by the World Bank Group as low income, lower-middle income, or upper-middle income based on the World Bank Group country classifications by income level. See section 3.03(4) of this notice.

(b) Building further on the prior examples in sections 3.03(1)(b) and (2)(c) of this notice, if the Distributor is a section 5.3 qualifying jurisdiction, then an adjustment under paragraph 54 of the Report may be required, using as the starting point the return-on-sales percentage that was determined under section 5.2. (Note: if an adjustment had not been required under section 5.2, then the section 5.3 adjustment would be made using the return-on-sales percentage that was determined under section 5.1 as the starting point.) As under section 5.2 (see section 3.03(2)(c), above), whether the return-on-sales percentage as adjusted under section 5.3 falls within the range described and applied in section 5.1 is not relevant.

#### (4) Qualifying Jurisdictions for Purposes of Sections 5.2 and 5.3 of the Report

The definitions of “section 5.2 qualifying jurisdiction” and “section 5.3 qualifying jurisdiction” are taken from the “Statement on the definitions of qualifying jurisdiction within the meaning of section 5.2 and section 5.3 of the simplified and streamlined approach,” which supplemented the Report. The provision of those definitions in that statement was anticipated by the incomplete definitions of “Qualifying jurisdiction(s) within the meaning of Section 5.2” and “Qualifying jurisdiction(s) within the meaning of

Section 5.3” that are provided on page 13 of the Report. The lists of section 5.2 qualifying jurisdictions and section 5.3 qualifying jurisdictions will be fixed prospectively based on those definitions, and published and updated every five years on the OECD website.

## SECTION 4. CREATION OF A SSA SAFE HARBOR: REQUIREMENTS AND CONSIDERATIONS

### .01 Overview

This section 4 describes the proposed rules that the Treasury Department and the IRS intend to issue which would, at a minimum, incorporate the SSA as a safe harbor application of the arm’s length standard under the section 482 regulations, as well as the administrative steps that a taxpayer must take to make the election and retain necessary documentation with respect to the SSA. It also describes the extent to which the Commissioner would respect the election for U.S. taxpayers. The Guidelines or the Report may be subject to future revisions and updates. Compliance with this section 4 will be determined based on the guidance in the Report (and as supplemented by the Statements) in effect as of the date of publication of this notice. The Treasury Department and the IRS expect to incorporate updates to the Report in future guidance.

### .02 Deemed Satisfaction of the Arm’s Length Standard

(1) Subject to the other provisions of this section 4.02, if a valid election to apply the SSA has been made with respect to an in-scope transaction, the Commissioner will consider the SSA to be the best method under the best method rule in Treasury Regulation section 1.482-1(c). Therefore, in such cases, it is not necessary to demonstrate that the SSA is the best method, nor can the Commissioner or an electing

taxpayer oppose the application of the SSA on the basis that it is not the best method. In the case of an application of the SSA as described in this section 4.02(1), the SSA will be considered a specified method for purposes of Treasury Regulation section 1.6662-6(d)(2). See section 4.04(1) of this notice regarding revisions of the applicable requirements under Treasury Regulation section 1.6662-6(d)(2)(ii)(A) for purposes of the SSA.

(2) Notwithstanding section 4.02(1) of this notice, the SSA will not be treated as the best method if any relevant party (that is, the Distributor, the Related Supplier, or either tax administration) demonstrates that the comparable uncontrolled price method described in Treasury Regulation section 1.482-3(b) using one or more internal comparables can be applied more reliably than the SSA and chooses to apply such method instead of the SSA. See also ¶ 42 of the Report.

(3) In any case in which a taxpayer determines a transfer price by reference to the SSA other than as described in section 4.02(1), whether the price so calculated satisfies the arm's length standard would be determined under the section 482 regulations, including the best method rule, and without regard to any guidance in the Report or this notice. The SSA will be considered an unspecified method for that purpose. See section 4.04(2) of this notice regarding the applicable requirements under Treasury Regulation section 1.6662-6(d)(3)(ii).

#### .03 Section 482 Adjustments When the SSA Has Been Applied

(1) The Commissioner may challenge whether a controlled transaction is an in-scope transaction, whether an election to apply the SSA has been made, and whether the income allocation has been properly calculated under the SSA. If the Commissioner

determines that a controlled transaction is not an in-scope transaction or otherwise that a valid election was not made, then section 4.02(1) of this notice would not apply. For such transactions, any adjustments would be determined under the otherwise applicable best method analysis set forth in Treasury Regulation section 1.482-1(c).

(2) If the Commissioner determines that a controlled transaction is an in-scope transaction, the exception described in section 4.02(2) does not apply, a valid election to apply the SSA was made, and the transfer price was properly calculated under the SSA, then the Commissioner would not make an adjustment under section 482 with respect to that transaction. If the Commissioner determines that a controlled transaction is an in-scope transaction and that a valid election was made, but the transfer price was not properly calculated under the SSA, then the Commissioner's allocations in such cases under section 482 would be limited to adjusting (i) the amount charged for the in-scope transaction to the amount properly determined under the SSA and (ii) any related amounts properly determined under other rules under section 482.

(3) A taxpayer's valid election to apply the SSA to an in-scope transaction for a taxable year shall constitute consent to the IRS's use of the SSA in calculating any applicable adjustment to such transaction in such taxable year. Thus, a taxpayer that has availed itself of the simplification benefits of the SSA cannot subsequently disavow its reliance on the SSA.

.04 Satisfaction of the Specified and Unspecified Method Requirements under Treasury Regulation Section 1.6662-6(d)(2)(ii)(A) and (3)(ii)

(1) In the case of any controlled transaction to which section 4.02(1) of this notice applies (or to which section 4.02(2) applies where the taxpayer made an election to

apply the SSA, but a comparable uncontrolled price method using one or more internal comparables was subsequently properly applied instead), the taxpayer will be deemed to have met the requirements of section 6662(e)(3)(B)(i)(I) and Treasury Regulation section 1.6662-6(d)(2)(ii)(A) if it reasonably concluded that it elected to apply the SSA (including determining that the relevant controlled transaction was an in-scope transaction) as described in the Report and section 3.02 of this notice, and that it correctly applied the mechanics of the SSA as described in the Report and section 3.03 of this notice. Whether the taxpayer's conclusions were reasonable will be determined from all relevant facts and circumstances. The factors relevant to this determination include those described in Treasury Regulation section 1.6662-6(d)(2)(ii)(A) to the extent applicable. In addition, section 4.07 of this notice addresses satisfaction of the documentation requirement under Treasury Regulation section 1.6662-6(d)(2)(iii) in such cases.

(2) In the case of any controlled transaction for which a taxpayer determines a transfer price by reference to the SSA and to which section 4.04(1) of this notice does not apply, the requirements of Treasury Regulation section 1.6662-6(d)(3)(ii)(A) apply without modification.

#### .05 Scope of Election

Under this notice, a taxpayer elects to apply the SSA on a transaction-by-transaction basis with respect to the taxable year for which the election is filed. A taxpayer that wishes to elect to apply the SSA to the same transaction with respect to future taxable years must file a new election statement as described in section 4.06 of this notice for each taxable year. The Treasury Department and the IRS are considering



whether, under proposed regulations, the SSA should include a requirement of consistent treatment such that a taxpayer's election to apply the SSA would be applied in some manner other than on a transaction-by-transaction and taxable year-by-taxable year basis.

#### .06 Procedure to Elect

A taxpayer elects to apply the SSA by filing with its original return for the taxable year for which the election is made a statement indicating the transaction(s) to which the taxpayer elects to apply the SSA. The statement must be titled "Election to apply the SSA," include a basic description of each transaction, identify the entities participating in each transaction (both name and taxpayer identification number, if applicable), and specify the entities' respective places of incorporation (or jurisdiction of tax residence, if different from place of incorporation). Solely for the purpose of identifying the transactions to which an election applies, transactions may be grouped on the basis of products, product lines, or similar groupings if such grouping basis reasonably enables the Commissioner to distinguish transactions covered by the election from transactions not covered by the election while also avoiding the impracticality of listing each individual transaction that is covered.

#### .07 Documentation

(1) For controlled transactions with respect to which a valid election to apply the SSA applies, the documentation requirements provided in section 4.07(2) of this notice supplant the requirements contained in Treasury Regulation section 1.6662-6(d)(2)(iii)(B) and (C).

(2) The documentation requirements for taxpayers electing to apply the SSA to in-scope transactions are met if the taxpayer maintains sufficient documentation to establish that the taxpayer reasonably concluded that, given the available data, any transaction(s) to which it has elected to apply the SSA were in-scope and that the taxpayer properly calculated the return under the SSA, and provides that documentation to the IRS within 30 days of a request for it in connection with an examination of the taxable year to which the documentation relates. The documentation must be in existence when the return is filed. A minor or inadvertent failure to provide required documents may be excused at the Commissioner's discretion, but only if the taxpayer has made a good faith effort to comply, and the taxpayer promptly remedies the failure when it becomes known. The taxpayer must maintain books and records that are sufficiently detailed to verify that it has complied with the SSA. Such records shall include:

- i. A description of the taxpayer's organizational structure (including an organization chart), including the name(s), employee identification number(s), and U.S. tax classification (where applicable) of all related parties engaged in the transaction(s) to which the SSA is applied;
- ii. A copy of the intercompany agreement(s) between the Distributor applying the SSA and its Related Supplier, the terms of which support the statement described in section 4.07(2)iii. of this notice both in form and in substance;
- iii. A statement explaining the eligibility of the subject transaction under the SSA scoping criteria set forth in section 3 of the Report;
- iv. All underlying data necessary to apply the scoping criterion set forth in paragraph 13.b. of the Report, and the corresponding calculated three-year weighted average operating expense-to-net revenue ratio described in paragraph 24 of the Report;

- v. The following financial information, as defined in the Report, for the taxable year for which the return is filed and three preceding taxable years:
  - 1. Distributor net revenue,
  - 2. Distributor cost of goods sold,
  - 3. Distributor net operating assets average balances, including all underlying data, and any applicable adjustments for accounts payable, for each respective taxable year,
  - 4. Distributor operating expenses,
  - 5. Distributor EBIT, and
  - 6. Distributor return on sales;
- vi. A statement regarding whether the financial statements of the Distributor required separation of distribution and non-distribution activities as specified in paragraph 14.b of the Report in order to reliably apply the SSA. If a separate basis of the Distributor's financial statements was required, the taxpayer must include an explanation of the methodology used to reliably separate distribution and non-distribution data in the financial statements for net revenues, net operating assets and its components, operating expenses, and earnings before interest and taxes;
- vii. Information necessary to apply the pricing matrix and any other applicable provisions of section 5 of the Report, including:
  - 1. A description of the relevant product(s) distributed,
  - 2. A statement identifying the industry grouping (1, 2, or 3) selected for each product, including any applicable weighted average calculations,
  - 3. A statement identifying the factor intensity (A, B, C, D, or E) for each product, including data and calculations for net operating asset intensity and operating expense intensity under section 5.1 of the Report, to the extent such data is not already provided in section 4.07(2)iv. or v. of this notice,

4. A statement demonstrating application of section 5.2 of the Report and providing conclusions, including all data and calculations required to apply the operating expense cross-check, and
5. A statement demonstrating application of section 5.3 of the Report, if relevant, and including all data and calculations required to apply the data availability mechanism, if applicable.

Upon examination of an in-scope transaction, the Commissioner may request that the taxpayer submit additional information or translate specific documents within 30 days. The Commissioner may extend this period for good cause.

#### .08 Competent Authority Considerations

Other jurisdictions may vary both in whether they will respect the application of the SSA as a general matter and, if they do respect it, in their interpretation of the SSA's requirements.<sup>6</sup> Further, although a taxpayer is permitted in the MAP context to assert any argument in support of its position (including an argument based on the SSA), the competent authority of one government cannot support a taxpayer's position based on the SSA if the other government has not implemented the SSA or agreed to accept the application of the SSA in that case. See generally section 8 of the Report. Taxpayers should carefully consider section 8 of the Report and potential inconsistencies between jurisdictions' policies with respect to the SSA in deciding (i) whether to elect the SSA

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<sup>6</sup> In limited circumstances, the members of the Inclusive Framework have made a political commitment to respect the application of the SSA for in-scope transactions when the Distributor Country is a "covered jurisdiction," as defined and enumerated in the OECD's "Statement on the definition of covered jurisdiction for the Inclusive Framework political commitment on Amount B." See the Introduction to the Report, p.6, fourth paragraph, third sentence. Under this commitment, a member of the Inclusive Framework that is a Related Supplier Country should respect the proper application of the SSA pursuant to the law of the Distributor Country if the Distributor Country is a covered jurisdiction. The intention of the United States to respect the proper application of the SSA by U.S. taxpayers regardless of whether the Distributor Country is a covered jurisdiction, as described in this notice, satisfies the political commitment.

under U.S. law or foreign law, (ii) whether to otherwise rely on the SSA, or (iii) the extent and nature of documentation to create and maintain.

## SECTION 5. DEFINITIONS

The following definitions apply solely for purposes of this notice.

“Controlled transaction” is defined in Treasury Regulation section 1.482-1(i)(8).

“Distributor” has the meaning provided on page 10 of the Report. Thus, a Distributor is also the tested party referenced in the Report.

The “Distributor Country” is the jurisdiction in which the Distributor is subject to tax with respect to income derived from a qualifying transaction.

An “in-scope transaction” is a qualifying transaction that meets the scoping criteria established in section 3.2 of the Report, as further elaborated in section 3.3 of the Report. For purposes of the scoping criterion set forth in paragraph 13.b. of the Report, the annual operating expenses incurred by a tested party in a qualifying transaction must be no lower than 3% and must not exceed an upper bound of between 20% and 30% of the tested party’s annual net revenues, with such upper bound to be determined by the rules of the Distributor Country.

“Inclusive Framework” refers to the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting.

A “qualifying transaction” is a controlled transaction that is a qualifying transaction within the meaning of section 3.1 of the Report.

A “non-U.S. Distributor” is a Distributor that is subject to tax in a jurisdiction other than the United States with respect to income derived from a qualifying transaction.

A “Related Supplier” is the party to a qualifying transaction that is the associated enterprise as described in paragraph 10 of the Report. Thus, a Related Supplier is the controlled taxpayer (as defined in Treasury Regulation section 1.482-1(i)(5)) in the transaction that is not the Distributor or the tested party referenced in the Report.

The “Related Supplier Country” is the jurisdiction in which the Related Supplier is subject to tax with respect to income derived from a qualifying transaction.

A “U.S. Distributor” is a Distributor that is subject to tax in the United States with respect to income derived from a qualifying transaction.

A “U.S. Related Supplier” is the counterparty to the non-U.S. Distributor with respect to a qualifying transaction.

## SECTION 6. APPLICABILITY DATE AND RELIANCE

### .01 Applicability Date

It is anticipated that the proposed regulations would provide that rules consistent with the rules described in sections 3 and 4 of this notice apply to taxable years beginning on or after January 1, 2025.

### .02 Reliance

Taxpayers may rely on the guidance provided in sections 3 and 4 of this notice, if they apply such guidance in its entirety and in a consistent manner, for taxable years beginning on or after January 1, 2025, and before the proposed regulations are published in the Federal Register. For taxable years beginning on or after January 1, 2025, and before proposed regulations are published in the Federal Register, taxpayers may rely on the text of the SSA for their U.S. tax reporting, as set forth in the Report

(and as supplemented by the Statements) if they also apply the rules described in Sections 3 and 4 pursuant to the prior sentence.

## SECTION 7. REQUEST FOR COMMENTS

### .01 General Overview

The Treasury Department and the IRS request comments from interested persons on this notice. The Treasury Department and the IRS contemplate updating this guidance as appropriate, including by issuing a notice of proposed rulemaking further implementing the safe harbor created by this notice, consistent with Option 1, or implementing a revised version of the SSA that is consistent with Option 2. Comments on all SSA-related topics are welcome and are solicited in particular on the following subjects:

- Whether application of the SSA should be determined solely by an election by taxpayers, or whether other considerations should also be taken into account, such as the ability of the IRS to apply the SSA in the absence of a taxpayer election (as described in section 3.01 of this notice) and whether the availability of the SSA for U.S. taxpayers should depend on whether the SSA has been implemented by the counterparty jurisdiction in order to ensure symmetry of tax treatment;
- Whether the possibility posed in section 4.05 of this notice of requiring elections other than on a transaction-by-transaction and taxable year-by-taxable year basis should be subject to any limitations that serve the interests of simplicity or sound tax administration. Possible limitations on electivity may include requiring that elections apply consistently to all in-scope transactions, to categories of in-scope

transactions, to a single in-scope transaction for multiple taxable years, or in a similarly consistent manner.

- the selection of 30% as the upper boundary of the operating expense-to-net revenue ratio scoping criterion pursuant to section 3.2 of the Report.

.02 Procedures for Submitting Comments.

(1) Deadline. Written comments should be submitted by March 7, 2025.

Consideration will be given, however, to any written comment submitted after March 7, 2025, if such consideration will not delay the issuance of proposed regulations.

(2) Form and manner. The subject line for the comments should include a reference to Notice 2025-04. All commenters are strongly encouraged to submit comments electronically. However, comments may be submitted in one of two ways:

(a) Electronically via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (type IRS-2024-0061 in the search field on the regulations.gov homepage to find this notice and submit comments); or

(b) By mail to: Internal Revenue Service, CC:PA:LPD:PR (Notice 2025-04), Room 5203, P.O. Box 7604, Ben Franklin Station, Washington, D.C., 20044

(3) Publication of comments. The Treasury Department and the IRS will publish for public availability any comments submitted electronically or on paper to its public docket on regulations.gov.

## SECTION 8. NO INFERENCE

No inference should be drawn from any provision of this notice concerning any other provision of section 482 or the regulations issued thereunder. See also ¶ 4 of the Report. Because the design choices reflected in the SSA are the result of a negotiated



construction of a simplification measure that is intended to be applied across a relatively broad range of fact patterns, it should not be inferred that any single design choice or combination thereof in the SSA implies the proper design of a best method for any transaction under the rest of the section 482 regulations regardless of whether it is an in-scope transaction. See also ¶ 43 of the Report. The mere fact that an activity does not qualify for the SSA should not be interpreted to mean that such activity generates lower or higher returns than is permissible under the SSA or that the returns provided by the SSA for in-scope taxpayers represent a floor or a ceiling for returns to distribution activities in general. See also ¶ 9 of the Report.

## SECTION 9. PAPERWORK REDUCTION ACT

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) (PRA) generally requires that a federal agency obtain the approval of the Office of Management and Budget (OMB) before collecting information from the public, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the OMB. The collections of information in this notice are in sections 4.06 and 4.07. This information is required to enable the IRS to verify that a taxpayer is reporting the correct amount of taxable income. The collections of information will be used by the IRS for tax compliance purposes. The likely respondents are business and other for-profit institutions.

This notice includes a reporting requirement to provide the IRS with a statement indicating the transactions to which the taxpayer elects to apply the SSA, as described

in section 4.06 of this notice. The recordkeeping requirements include that taxpayers keep books of account and records that are adequate to permit verification that the controlled transactions are within scope, that the SSA has been properly applied, and that a taxpayer is reporting the correct amount of taxable income. These collection requirements supplement the existing collection requirements within Treasury Regulation section 1.6662-6 (referenced in section 4.07 of this notice), which are included in the OMB Control Number 1545-0123 for business filers.

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.

#### SECTION 10. DRAFTING AND CONTACT INFORMATION

The principal authors of this notice are Lorraine Saxton Rodriguez and Robert Z. Kelley of the Office of Associate Chief Counsel (International). For further information regarding this notice contact Lorraine Saxton Rodriguez or Robert Z. Kelley at (202) 317-6939 (not a toll-free call).