

## Application of the Controlled Group Rules

*Does your Employee Benefit Plan benefit more employees than you thought it did?*

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## General Consequences of Controlled or Affiliated Service Group Status.

- When the sponsor of a qualified retirement plan is part of a controlled group, all employers of the group must be treated as a single employer for purposes of Internal Revenue Code (“IRC”) Sections 401, 408(k), 408(p), 410, 411, 415, 416, and 417.
- What does this mean to you?
  - If you are unaware that you (as an employer-sponsor of a qualified plan) are part of a controlled group, you may be jeopardizing the tax qualification of your qualified plan by applying applicable IRC limitations without considering the employees of other employers in the controlled group, or the actions of other employers in the controlled group.

## General Consequences – 401(a)(4) Nondiscrimination Testing

- Contributions under a plan may not discriminate in favor of Highly Compensated Employees (“HCEs”) [five-percent owners, or indexed compensation in excess of \$120,000 (for 2015) in the preceding year and in the top-paid group [(top 20% of employees ranked by compensation), if elected by employer]. IRC 414(q).
- Since all employees of a controlled group are treated as employed by a single employer, employees of a related business who are five-percent owners are treated as HCEs, and employee compensation from employees of the related business is aggregated as well.

## General Consequences – 401(a)(17) Compensation Limits

- Limits amount of compensation that may be considered under a qualified plan (\$265,000 for 2015).
- If part of a controlled group, compensation must be aggregated between employers.
- For example, if \$150,000 received from employer A and \$150,000 from employer B, each of which sponsors its own plan, only \$265,000 of the total \$300,000 can be considered in determining employee's allowable contribution under both plans.

## General Consequences – 401(a)(26) Minimum Participation

- IRC 401(a)(26) requires that a plan must benefit the lesser of 50 employees or 40% or more of all employees.
- In testing a plan for whether it satisfies the IRC 401(a)(26) minimum participation limit, all employers are required to be aggregated under IRC Sections 414(b) and (c) must be treated as a single employer.

## General Consequences – 401(a)(3) and 410(a) Eligibility

- IRC 401(a)(3) requires that a qualified plan satisfy IRC 410, coverage and eligibility.
- In general, all years of service with an employer must be counted.
- IRC Sections 414(b) and (c) require the consolidation of all employees in the group as if employed by one employer.
- Therefore, years of service with the following entities must be counted:
  - Any member of a controlled group of corporations, or
  - A commonly controlled entity, whether or not incorporated.

## General Consequences – 410(b) Coverage Example

- A Corp and B Corp are members of a controlled group.
- A Corp maintains a qualified plan in which only its employees may participate.
- B Corp employees are not eligible to participate in the plan.
- The A Corp plan has a one-year service requirement. It must recognize service with all employers in the controlled group and otherwise meet the coverage requirements of IRC 410(b) with reference to the entire group.
- The plan administrator determines that one employee, Employee A, had completed two years of service with B Corp prior to his transfer to A Corp.
- The plan administrator required Employee A to complete a year of service with A Corp before including her in the plan.
- In this instance, Employee A should have become a participant in the plan as soon as he started to work for A Corp, because he had already completed a year of service under B Corp.
- Failure to have Employee A participate immediately in the plan means the plan violates IRC Sections 401(a)(3) and 410(a)(1)(A).

## General Consequences – 401(a)(7) and 411 Vesting

- IRC 401(a)(7) requires that a qualified plan satisfies IRC 411, vesting.
- In general, all years of service with an employer must be counted.
- IRC Sections 414(b) and (c) require the consolidation of all employees in the group as if employed by one employer.
- Therefore years of service with the following entities must be counted:
  - Any member of a controlled group of corporations, or
  - A commonly controlled entity, whether or not incorporated.



## General Consequences – IRC 415 Limits

- IRC 401(a)(16) requires that a qualified plan must meet the requirements of IRC 415.
- IRC Sections 414(b) and (c) require the consolidation of all employees in the group as if employed by one employer.
- Benefits and contributions under all plans maintained by employers in the group must be aggregated to determine the maximum amount allowed by section 415.
- Example – A Corp and B Corp are part of a controlled group. Each maintains an identical profit sharing plan.
  - During the 2014 plan year, Sue earns \$200,000 from each employer and is a participant in each plan. She receives an allocation of \$50,000 in each.
  - Since the employers are members of a controlled group, the limitation of IRC 415(c)(1)(A) should have been applied by aggregating the allocations under **both** plans. This would have limited the total allocations to the lesser of 100% of compensation or \$52,000 (2014).
  - The allocations in this instance result in a disqualification of either one or the other of the plans due to a violation of IRC Sections 401(a)(16) and 415(c)(1)(A).
  - Note: The actual plan to be disqualified is determined pursuant to Treas. Reg. section 1.415-9(b)(3)(iii).

## ACA Consequences

- The Patient Protection and Affordable Care Act (“ACA”) adopted the definition of common control set forth in IRC 414 in order to:
  - Prevent owners from subdividing their companies to receive more beneficial treatment under ACA.
  - Prevent owners of companies from providing “Cadillac” plans to the owners and senior managers of one company and lesser coverage to the rank and file employees.

## ACA Consequences (Cont'd)

- Some ACA requirements apply to an “applicable large employer” as a whole; others apply to the “applicable large employer member...”
- Several ACA Provisions specify that entities will be treated as a single employer in accordance with the Controlled Group rules. Among the more notable ACA provisions:
  - Shared Responsibility/Employer Mandate Penalty (IRC 4980H) – IRC 414 Controlled Group rules used to determine whether members together constitute an “Applicable Large Employer” (50+ full-time employees).
  - Health Insurance Providers Fee - (Treas. Reg. 57.2(d)). Members of a Controlled Group will be treated as a single “covered entity” for purposes of the IRC 9010(a) annual fee on each “covered entity” engaged in the business of providing health insurance. See IRS Notice 2014-47.
  - Small Employer Tax Credits - Since its enactment on March 23, 2010, the ACA has offered a tax credit to help the Eligible Small Employer [(25 or fewer Full-Time Employees (“FTEs”))] with the cost of premiums for its employees' health insurance coverage. This provision is subject to average annual wage thresholds. On June 30, 2014, final regulations were published. Under Treas. Reg. 1.45R-2(b), the IRC 414 Controlled Group rules apply (aggregating all employees in the group) to determine whether any member of the Controlled Group or Affiliated Service Group is an Eligible Small Employer.

## ACA Consequences (Cont'd)

- Cadillac Tax on High Cost Employer-Sponsored Health Coverage – For taxable years after December 31, 2017, IRC 4980I imposes a 40% excise tax on the aggregate cost of “applicable employer-sponsored coverage.” Under IRC 4980I(4)(9), the IRC 414 Controlled Group rules are used to treat all employers as a single employer for application of the excise tax. See IRS Notice 2015-16.
- Non-Discrimination Rules - As of September 23, 2010, ACA regulations introduced new non-discrimination regulations that cover both insured and self-funded health plans which apply to all employees of a Controlled Group and assesses penalties to any employer which provides health benefits that favor HCEs.
- Access to Health Benefit Exchanges – As of October 1, 2013, Eligible Employers with less than 101 employees can shop for health insurance for their employees on the new SHOP health insurance exchanges. This number may be as few as 50 in some states. IRC 414 Controlled Group rules apply in determining whether any member of a Controlled Group or Affiliated Service Group is an Eligible Small Employer.

# Types of Controlled Groups

- Parent-Subsidiary
- Sibling (Brother-Sister)
- Combined (Combination of the two)

## Parent-Subsidiary

- A Parent-Subsidiary Controlled Group exists when one or more chains of corporations are connected through stock ownership with a common parent corporation; and
  - 80 percent of the stock of each corporation (except the common parent) is owned by one or more corporations in the group; and
  - Parent corporation must own 80 percent of at least one other corporation.
- IRC Sections 1563(a) and 414(b) and (c).

## Parent-Subsidiary (Example)

- Parent Corporation owns:
  - 95% of the stock of A Corporation,
  - 80% of the stock of B Corporation, and
  - 70% of the stock of C Corporation.
- Unrelated persons own the percentage of stock not owned by Parent Corporation.
- Parent Corporation owns 80% or more of the stock of the A Corporation and B Corporation.
- Therefore, Parent Corporation is the common parent of a Parent-Subsidiary group consisting of Parent, A Corporation, and B Corporation. C Corporation is not a member of the group because Parent Corporation's ownership is less than 80%.

## Brother-Sister Controlled Group

- A Brother-Sister Controlled Group is a group of two or more corporations, in which five or fewer common owners (a common owner must be an individual, a trust, or an estate) own directly or indirectly a “controlling interest” of each group and have “effective control”.
  - Controlling interest – Treas. Reg. Section 1.414(c)-2(b)(2)
    - Generally means 80 percent or more of the stock of each corporation (but only if such common owner owns stock in each corporation).
  - Effective control – Treas. Reg. Section 1.414(c)-2(c)(2)
    - Generally more than 50 percent of the stock of each corporation, but only to the extent such stock ownership is identical with respect to such corporation.



## Brother-Sister (Example)

- A Corp and B Corp are owned by four shareholders, in the following percentages:

Shareholder	A Corp	B Corp
A	80%	20%
B	10%	50%
C	5%	15%
D	5%	15%
<b>TOTAL</b>	<b>100%</b>	<b>100%</b>

- To meet the first part of the test in IRC 1563(a)(2)(A), the same five or fewer common owners must own more than 80% of stock or some interest in all members of the controlled group.
- In this example, the four shareholders together own 80% or more of the stock of each corporation and the first test is met, since the shareholders own 100% percent of the stock.

## Brother-Sister (Example) (Cont'd)

- Shareholder Identical Ownership Percentage in both corporations:

<b>A</b>	20%
<b>B</b>	10%
<b>C</b>	5%
<b>D</b>	5%
<b>TOTAL</b>	<b>40%</b>

- To meet the second part of the test in IRC 1563(a)(2)(B), the same five or fewer common owners must own more than 50% of each corporation, taking into account the stock ownership of each person only to the extent such stock ownership is identical with respect to each such corporation.
- In this example, although the four shareholders together own 80% or more of the stock of each corporation, they do not own more than 50% of the stock of each corporation, taking into account only identical ownership in each of the two corporations A Corp and B Corp. Therefore, no Brother-Sister Controlled Group.

## Combined Group

- A Combined Group consists of three or more organizations that are organized as follows:
  - Each organization is a member of either a Parent-Subsidiary or Brother-Sister Controlled Group; and
  - At least one corporation is the common parent of a Parent-Subsidiary Controlled Group; and
  - is also a member of a Brother-Sister Controlled Group.

## Combined Group (Example)

- A is an individual owning:
  - An 80% interest in a Partnership (“Partnership”); and
  - A 90% in ownership interest in a Corporation (“Corporation A”)
- Partnership owns 85% of another corporation (“Corporation B”)
- Partnership, Corporation A, and Corporation B are each members of the same Combined Group of trades or businesses under common control because Partnership, Corporation A, and Corporation B are each members of either a Parent-Subsidiary or a Brother–Sister Controlled Group, and Partnership is:
  - The common parent of the Parent-Subsidiary Controlled Group consisting of Partnership and Corporation B; and
  - A member of a Brother-Sister Controlled Group consisting of Partnership and Corporation A.

# Attribution Rules – Controlled Groups

- IRC 1563 attribution is used in determining a Controlled Group of businesses, under IRC Sections 414(b) and (c).
- Measuring Ownership
  - Trust: Actual Interest
  - Partnership: Capital or Profits Interest (Use the Greater of the two)
  - Corporation: Voting stock or Value of Stock (Use the Greater of the two)
- IRC 1563 contains the rules of attribution used to determine “control” for the following:
  - Controlled Groups of corporations (IRC 414 (b)); and
  - Trades or businesses, whether or not incorporated, which are under common control (IRC 414 (c)).

# Attribution Rules – Controlled Groups (Family Attribution)

## ■ Spouse

- Ownership Interest is attributed to the spouse unless the spouse has:
  - No direct ownership,
  - No participation in the business, and
  - No more than 50% of business gross income is from passive investments.
  - See Treas. Reg. 1.414(c)-4(b)(5)(ii).

## ■ Minor Child (Under Age 21)

- Ownership Interest attributed to Parent.

## ■ Parent

- Ownership Interest attributed to Adult Child (Age 21 or Older) only if Adult Child owns more than 50% of the business (i.e. is in “effective control” under Treas. Reg. 1.414(c)-2(c)(2)).

## Attribution Rules – Controlled Groups (Family Attribution) (Cont'd)

### ■ Adult Child

- Ownership Interest attributed to Parent only if Parent owns more than 50% of the business.

### ■ Grandparent

- Ownership interest attributed to grandchild (minor or Adult) only if grandchild owns more than 50% of the business.

### ■ Grandchild

- Ownership interest attributed to grandparent only if grandparent owns more than 50% of the business.

### ■ Sibling

- There is no sibling attribution.

# Organizational Attribution – Controlled Groups

- From corporation to shareholder (Brother-Sister Controlled Group only).
  - Corporate ownership interests attributed proportionately to shareholders (owning at least 5% of corporate stock).
- From partnership to partner (Brother-Sister Controlled Group only).
  - Partnership ownership interests attributed proportionately to partners having at least 5% or more capital or profits interest.
- From a trust to its beneficiaries (both Brother-Sister and Parent-Subsidiary Controlled Groups).
  - Trust ownership interests attributed, proportionately to beneficiaries having 5% or more actuarial interest.
- To an organization.
  - N/A.



## Organizational Attribution – Controlled Groups (Example)

- Shareholder A owns 80% of the stock in the Corporation A. Shareholder B owns 10% of the stock in Corporation A and four other individuals who each own less than 5% own the remaining 10%.
- Corporation A has a 20% stock ownership in Corporation B. The Corporation B stock is attributed to Shareholders A and B in proportion to their ownership interests in Corporation A as follows:
  - Shareholder A is treated as a 16% owner of Corporation B.  $80\%$  (interest in Corporation A)  $\times$   $20\%$  (Corporation A's interest in Corporation B)
  - Shareholder B is treated as a 2% owner of Corporation A.  $10\%$  (interest in Corporation A)  $\times$   $20\%$  (Corporation A's interest in Corporation B)
  - Since each of the four remaining shareholders of Corporation A own less than 5%, they are not treated as owning any interest in Corporation B.

## Affiliated Service Groups

- History: IRC § 414(m) was enacted to expand the idea of control to separate, but affiliated, entities. Proposed Treas. Reg. § 1.414(m) provides that all employees of the members of an Affiliated Service Group shall be treated as if they were employed by a single employer.

# Types of Affiliated Service Groups

- An Affiliated Service Group is one type of group of related employers and refers to two or more organizations that have a service relationship and, in some cases, an ownership relationship, described in IRC 414(m).
- An Affiliated Service Group can fall into one of three categories:
  - A-Organization groups (referred to as “A-Org”), consists of an organization designated as a First Service Organization (“FSO”) and at least one “A organization”,
  - B-Organization groups (referred to as “B-Org”), consists of a FSO and at least one “B organization”, or
  - Management groups.
- An FSO must be a "service organization":
  - Performance of services is the principal business of the organization as defined in section 414(m)(3), and Proposed Treas. Reg. 1.414(m)-2(f).

# A Organizations

- To be an A-Org, an organization must satisfy a two-part test:
  - Ownership Test
    - The organization is a partner or shareholder in the FSO (regardless of the percentage interest it owns in the FSO) determined by applying the attribution rules (IRC 318(a)), and
  - Working Relationship Test
    - The organization "regularly performs services for the FSO," or
    - Is "regularly associated with the FSO in performing services for third parties." Facts and circumstances are used to determine if a working relationship exists. Proposed Treas. Reg. 1.414(m)-2(b); IRC 414(m)(2)(A).

# B Organizations

- To be a B-Org, the organization must meet the following requirements:
  - A significant portion of its business must be the performance of services for a FSO, for one or more A-Orgs determined with respect to the FSO, or for both,
  - The services must be of a type historically performed by employees in the service field of the FSO or the A-Orgs, and
  - Ten percent or more of the interests in the B-Org must be held, in the aggregate, by persons who are HCEs (under IRC § 414(q)) of the FSO or A-Org. A B-Org need not be a service organization. See IRC 414(m)(2)(B).
- Historically Performed - Services will be considered of a type historically performed by employees in a particular service field if it was not unusual for the services to be performed by employees of organizations in that service field (in the United States) on December 13, 1980.
- Significant Portion - Proposed Treas. Reg. 1.414(m)-2(c)(2) specifies that whether providing services (for the FSO, for one or more A-Orgs or for both,) is a "significant portion" of the business of an organization will be based on the facts and circumstances.

## Whether Providing Services is a “Significant Portion” of the Business of an Organization

- The following tests may be used in a facts and circumstances analysis:
  - Service Receipts Safe Harbor Test; and
  - Total Receipts Threshold Test. Proposed Treas. Reg. 1.414(m)-(2)(c)(2).
  - Service Receipts Safe Harbor
    - The performance of services for the FSO, for one or more A-Orgs, or for both, will not be considered a significant portion of the business of an organization if the “service receipts percentage” is less than five percent.
    - The “service receipts percentage” is the ratio of:
      - Gross receipts of the organization derived from performing services for the FSO, for one or more A-Orgs, or for both, over

## Whether Providing Services is a “Significant Portion” of the Business of an Organization (Cont’d)

- Total gross receipts of the organization derived from performing services.
- This ratio is the greater of:
  - ✓ The ratio for the year for which the determination is being made, or
  - ✓ The ratio for the three-year period including that year and the two preceding years (or the period of the organization’s existence, if less).

## Whether Providing Services is a “Significant Portion” of the Business of an Organization (Cont’d)

- Total Receipts Threshold Test
  - The performance of services for the FSO, for one or more organizations, or for both, will be considered a significant portion of the business of an organization if the "total receipts percentage" is ten percent or more.
    - The "total receipts percentage" is calculated in the same manner as the service receipts percentage, except that gross receipts in the denominator are determined without regard to whether they were derived from performing services.



## “Services” For Purposes of an Affiliated Service Group Determination

- The principal business of an organization will be considered the performance of services if capital is not a material income-producing factor for the organization, even though the organization is not engaged in a field listed in Proposed Treas. Reg. 1.414(m)-2(f)(2).
  - Whether capital is a material income-producing factor must be determined by reference to all the facts and circumstances of each case.
  - In general, capital is a material income-producing factor if a substantial portion of the gross income of the business is attributable to the employment of capital in the business as reflected, for example, by a substantial investment in inventories, plant, machinery or other equipment.
  - Capital is a material income-producing factor for banks and similar institutions.
  - Capital is not a material income-producing factor if the gross income of the business consists principally of fees, commissions or other compensation for personal services performed by an individual.

# “Deemed” Service Organizations

- Regardless of whether capital is or is not a material income-producing factor, an organization engaged in any one or more of the following fields is a service organization:
  - Health,
  - Law,
  - Engineering,
  - Architecture,
  - Accounting,
  - Actuarial science,
  - Performing arts,
  - Consulting, and
  - Insurance.

## Special Rules Applicable to “Deemed” Service Organizations

- An organization will not be considered as performing services merely because:
  - It is engaged in the manufacture or sale of equipment or supplies used in one of the deemed fields above
  - It is engaged in performing research or publishing in the above deemed fields, or
  - An employee provides one of the enumerated services to the organization or other employees of the organization, unless the organization is also engaged in the performance of the same services for third parties.

# Professional Service Corporations in an Affiliated Service Group

- All the employees of professional service corporations that are members of an Affiliated Services Group shall be aggregated together and treated as if they were employed by a single employer for purposes of the employee benefit requirements.
- A professional service corporation:
  - Is a corporation that is organized under state law for the principal purpose of providing professional services,
  - Has at least one shareholder who is licensed or otherwise legally authorized to render the type of services for which the corporation is organized, and
  - Provides the services performed by certified or other public accountants, actuaries, architects, attorneys, chiropractists, chiropractors, medical doctors, dentists, professional engineers, optometrists, osteopaths, podiatrists, psychologists and veterinarians.
  - The IRS may expand the list of services.

## Attribution (Affiliated Service Groups) – Family Attribution

- The ownership interests are attributed as follows:
  - Spouse to Spouse
  - Parent to Child (Regardless of Child's Age)
  - Child to Parent (Regardless of Child's Age)
  - Grandchild to Grandparent
  - Grandparent's interest is not attributed to Grandchild
  - Siblings – N/A
- See IRC 318.

# Attribution (Affiliated Service Groups) – Organizational Attribution

- From a corporation to its shareholders
  - Attributed proportionately to shareholders owning at least 50 percent of corporate stock.
- From a partnership to its partners
  - Partnership ownership interest attributed proportionately to all parties.
- From a trust to its beneficiaries
  - Trust's ownership interests attributed proportionately to all beneficiaries.
- To a corporation
  - Interest owned by individual owning at least 50 percent of corporation is attributed to the corporation.
- To a partnership
  - Interest owned by partner is attributed to the partnership.
- To a trust
  - Interest owned by trust beneficiaries is attributed to the trust.
- See IRC 318

## FSO and A-Org (Example)

- Partnership is a law partnership with offices in numerous cities. Corporation is a corporation in San Diego that is a partner in the Partnership.
- Corporation provides paralegal and administrative services for the attorneys in the law firm. All of the employees of the Corporation work directly for the Corporation, and none of them work directly for any of the other offices of the law firm (in other cities).
- The law firm is an FSO (a “deemed” service organization).
- Corporation is an A-Org because it is a partner in the FSO and is regularly associated with the law firm in performing services for third parties.
- Corporation and Partnership would together constitute an Affiliated Service Group. Therefore, the employees of both must be aggregated and treated as if they were employed as a single employer per IRC 414(m).

## FSO and B-Org (Example)

- Financial Services Partnership (“FSP”) is a financial services organization that has 6 equal ownership partners. Each partner of FSP owns two percent of the stock in B Corp. B Corp provides services to the partnership of a type historically performed by employees in the financial services field. A significant portion of the business of B Corp consists of providing services to FSP. Considering FSP as an FSO, B Corp is a B-Org because:
  - A significant portion of its business is in the performance of services for the partnership of a type historically performed by employees in the financial services field. And,
  - More than 10% of the interests in B Corp is held, in the aggregate, by the HCEs of the FSO (consisting of the 6 common owners of FSP). Accordingly, FSP and B Corp constitute an Affiliated Service Group.
  - Therefore, the employees of FSP and B Corp must be aggregated and treated as if they were employed by a single employer. IRC 414(m).



# Management Organizations (Affiliated Service Groups)

- A Management Affiliated Service Group applies as follows:
  - An organization performs management functions, and
  - The management organization's principal business is performing management functions on a regular and continuing basis for a recipient organization.
- Common ownership between the management organization and the recipient organization for which it provides service is not necessary (irrelevant).
- Recipient Organization
  - Any person related (“related” under IRC 144(a)(3)) to the organization performing the management services is also to be included in the group that is aggregated and treated as a single employer as a “recipient organization.”
  - Any organization part of a Controlled Group with the management organization under IRC 414 is treated as a “recipient organization.”
- See IRC 414(m)(5).

## Management Organizations (Affiliated Service Groups) (Cont'd)

- “Principal Business” – three methods of determining whether management functions is a “principal business”:
  - Two-Tax-Year Rolling Percentage
    - Performance of management functions for the recipient organization must be more than 50 percent of the management organization's business activities during the two tax year period that includes such tax year and the prior tax year.
    - If the management organization was not in existence prior to the current tax year, the "more than 50 percent test" only applies to the current tax year.
    - Once the "more than 50 percent test" is met for the management organization and recipient organization, the percentage drops to 40 percent for all subsequent tax years unless an exception applies:
      - **Five Percent Rule** – The performance of management functions for the recipient organization constitutes less than five percent of the management organization's subsequent tax year. Management organization ceases to be a management organization (with respect to the particular recipient organization).

# Management Organizations (Affiliated Service Groups) (Cont'd)

- There is an intervening tax year for which the management organization and the recipient organization do not satisfy the “more than 40 percent test”.
- The management organization satisfies the “more than 50 percent test” with respect to a different recipient organization for such subsequent year and the immediately preceding tax year. In that case, the second organization becomes the recipient organization.
- Percentage of Gross Receipts
  - Percentage of gross receipts derived from management functions and other services performed for a recipient organization, as compared to the gross receipts derived from all business activities (not including the sale of assets). In determining the two tax year percentage, gross receipts for the combined two tax year period are compared. Not permissible to average the percentages determined separately for each tax year.
- Facts and Circumstances
  - IRS has the discretion to determine that the use of gross receipts is not an appropriate method for determining principal business. Facts and circumstances include (but not limited to) the amount of time actually spent by individuals in performing management functions and other services for a recipient organization.

# Management Organizations (Affiliated Service Groups) (Cont'd)

- Management functions:
  - Must be “Management Activities,” and
  - “Historically Performed.”
  - Management Activities - includes determining, implementing, or supervising (or providing advice or assistance) in accomplishing the following:
    - Daily business operations (such as production, sales, marketing, purchasing, and advertising),
    - Personnel (e.g. staffing, training, supervising, hiring and firing),
    - Employee compensation and benefits (e.g. salaries and wages, paid vacations and holidays, life and health insurance, and pensions),
    - Short-range and long-range business planning (e.g. product development, budgeting, financing, expansion of operations, and capital investment),

# Management Organizations (Affiliated Service Groups) (Cont'd)

- Organizational structure and ownership (e.g. corporate formation, stock issues, dividends, mergers, and acquisitions)
- Management Activities also include professional services that relate to the above services.
- Management Activities also include professional services of the same type as the professional services performed by the recipient organization for third parties, regardless of whether such professional services are historically performed by employees.
- Historically Performed - if it was not unusual for management activities and services of such type to be performed by employees of organizations in that particular business field, in the United States, on September 3, 1982.

# Management Organizations (Affiliated Service Groups) – Attribution

## ■ Family Attribution

- IRC 267 applies (rather than IRC 318 for Affiliated Service Groups other than Management Organizations, and IRC 1563 for Controlled Groups).
- Individuals are attributed interests owned by spouse, ancestors, lineal descendants and siblings (unlike in IRC 318 and IRC 1563).

## ■ Organizational Attribution

- Ownership interests of a corporation, partnership, or trust are attributed, proportionately, to all of its shareholders, partners, or beneficiaries (unlike in IRC 318 and IRC 1563, where the shareholders, partners, or beneficiaries must have a minimum ownership percentage before the organization's interest is attributed to them).



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