



# TaxNewsFlash

United States



No. 2019-286  
June 5, 2019

## IRS directive, selecting transfer pricing issues involving cost sharing arrangements

The IRS today posted a Large Business and International (LB&I) directive that announces the withdrawal of a prior LB&I directive concerning transfer pricing issue selection by IRS examiners when related to issues of “reasonably anticipated benefits” in cost sharing arrangements.

The LB&I directive posted today is [LB&I-04-0519-005](#) (dated May 21, 2019, with a posting date of June 5, 2019).

With this LB&I directive, the IRS is formally withdrawing LB&I-04-0118-004 (January 12, 2018) which provided instructions for examiners on transfer pricing issue selection related to reasonably anticipated benefits in cost sharing arrangements.

### Background

The 2018 LB&I directive provided instructions to IRS examiners to stop developing adjustments to cost sharing arrangements based solely on changing a taxpayer’s multiple reasonably anticipated benefits (RAB) shares to a single RAB share when subsequent platform contribution transactions were added to an existing cost sharing arrangement until the IRS finalized its position. The 2018 directive was issued to support the efficient use of transfer pricing examination resources. Restricting the use of examination resources allowed the IRS to direct resources to other transfer pricing examination issues until the IRS Chief Counsel completed the technical analysis of interpretation of the regulations related to the specific RAB share question. Read [TaxNewsFlash](#)

In July 2018, the IRS Office of the Associate Chief Counsel (International) issued an advice memorandum (AM 2018-003) that finalized the IRS position and concluded:

- It may be appropriate to determine and apply different RAB shares with respect to separate cost pools under a single cost sharing arrangement.
- It may be appropriate to determine and apply a RAB share solely for the purpose of calculating platform contribution transaction (PCT) payments with respect to a particular subsequent PCT that

was different from the RAB share used by the taxpayer to calculate cost share transaction payments under the cost sharing arrangement immediately before the subsequent PCT was entered into.

### **Withdrawal of 2018 directive**

The LB&I directive posted today notes the withdrawal of the 2018 directive, effective May 21, 2019.

The new directive states:

- With the issuance of the 2018 memo, examination of these cost sharing arrangement issues can continue with the application of the most reliable method depending on the facts and circumstances of each case to determine the appropriateness of using single or multiple RAB shares with respect to a single cost sharing arrangement.
- These issues are necessarily fact-intensive and may be complex.
- Transfer pricing issue teams need to exercise “care and rigor” in developing the facts to support their analyses and conclusions.
- When appropriate, an IRS team must consider consulting the practice network and/or Chief Counsel for support in developing the most reliable analysis of this issue.

The information contained in TaxNewsFlash is not intended to be "written advice concerning one or more Federal tax matters" subject to the requirements of section 10.37(a)(2) of Treasury Department Circular 230, as the content of this document is issued for general informational purposes only, is intended to enhance the reader's knowledge on the matters addressed therein, and is not intended to be applied to any specific reader's particular set of facts. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. Applicability of the information to specific situations should be determined through consultation with your tax adviser.

KPMG International is a Swiss cooperative that serves as a coordinating entity for a network of independent member firms. KPMG International provides no audit or other client services. Such services are provided solely by member firms in their respective geographic areas. KPMG International and its member firms are legally distinct and separate entities. They are not and nothing contained herein shall be construed to place these entities in the relationship of parents, subsidiaries, agents, partners, or joint venturers. No member firm has any authority (actual, apparent, implied or otherwise) to obligate or bind KPMG International or any member firm in any manner whatsoever.

Direct comments, including requests for subscriptions, to [Washington National Tax](#). For more information, contact KPMG's Federal Tax Legislative and Regulatory Services Group at + 1 202.533.4366, 1801 K Street NW, Washington, DC 20006-1301.

To unsubscribe from TaxNewsFlash-United States, reply to [Washington National Tax](#).

[Privacy](#) | [Legal](#)