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IRS practice unit: Allocation of success-based fees in certain acquisitions

The IRS Large Business and International (LB&I) division today publicly released a “practice unit”—part of a series of IRS examiner “job aides” and training materials intended to describe for IRS agents leading practices about tax concepts in general and specific types of transactions.

The title of the practice unit is: *Allocation of success-based fees in a covered transaction*

This practice unit explains:

- A taxpayer generally must capitalize amounts paid that facilitate taxable acquisitions, acquisitive reorganizations, and similar transactions, including “covered transactions” (as defined in Reg. section 1.263(a)-5(e)(3)).
- Amounts paid in a covered transaction often include professional fees that become payable only if the transaction is completed.
- A fee that is contingent on the successful closing of the transaction (a “success-based fee”) is presumed to facilitate the transaction and must be capitalized; however, a taxpayer can rebut this presumption by maintaining sufficient documentation to establish that a portion of the fee is allocable to activities that do not facilitate the transaction.
- Rev. Proc. 2011-29 provides an elective safe harbor for allocating success-based fees paid in a covered transaction between facilitative and non-facilitative activities. This safe harbor was provided, in part, to act as an incentive, to encourage taxpayers to make the election rather than gather and maintain documentation required to establish that a portion of a success-based fee is allocable to activities that do not facilitate a covered transaction.
- A taxpayer that does not elect to allocate success-based fees paid in a covered transaction using the safe harbor allocation must maintain documentation meeting the requirements of Reg. section 1.263(a)-5(f) to support an allocation of success-based fees to activities that do not facilitate the covered transaction.

The practice unit discusses a process for IRS examiners to follow in reviewing the allocation of success-based fees paid in a covered transaction between facilitative and non-facilitative activities when the safe harbor allocation is not elected.

Read the practice unit on the [IRS practice unit webpage](#) (posting date of June 13, 2019).

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