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IRS withdraws LB&I directive on cost-sharing arrangements

The IRS today posted a document that formally withdraws a transfer pricing-related directive from the IRS Large Business and International (LB&I) division concerning cost-sharing arrangements and stock-based compensation.

Read [LB&I-04-0719-008](#) (dated July 31, 2019, and posted August 5, 2019).

The LB&I directive posted today formally withdraws Directive LB&I-04-0118-005 (dated January 12, 2018) that provided instructions for examiners on transfer pricing issue selection related to stock-based compensation (SBC) in cost-sharing arrangements (CSAs). Read [TaxNewsFlash](#)

Today's LB&I directive explains:

- U.S. taxpayers that are cost-sharing participants are required to include SBC as intangible development costs (IDCs), under Reg. sections 1.482-7A(d)(2) and 1.482-7(d)(3), if such costs are directly identified with, or reasonably allocable to, the intangible development activity of the CSA.
- In *Altera Corp. v. Commissioner*, 145 T.C. 91 (2015), the U.S. Tax Court invalidated Reg. section 1.482-7A(d)(2).
- The IRS appealed the Tax Court's decision in *Altera* and issued Directive LB&I-04-0118-005 in early 2018, directing examiners to stop opening new examinations for issues related to SBC included in CSA IDCs until the outcome of the *Altera* appeal was known.
- The U.S. Court of Appeals for the Ninth Circuit in June 2019 reversed the Tax Court's decision in *Altera*.

Today's LB&I directive states:

Based on the Ninth Circuit's decision in Altera, I am formally withdrawing Directive LB&I-04-0118-005. With the issuance of this Withdrawal, examiners should continue applying Treas. Reg. §§

1.482-7A(d)(2) and 1.482-7(d)(3), including opening new examinations of CSA SBC issues when appropriate. These issues may be factually intensive, and transfer pricing teams should develop the facts to support their analyses and conclusions. Where appropriate, Issue Teams should consider consulting the Practice Network and Counsel for support in developing the most reliable analyses of this issue. We will continue to monitor any further developments related to the Ninth Circuit's decision.

KPMG observation

The Ninth Circuit's decision in *Altera* was decided by a two-judge majority and included a dissenting opinion. The taxpayer in *Altera* has requested en banc review of the majority decision by the Ninth Circuit, and there have been others—including KPMG LLP—that filed amicus curiae briefs in support of the taxpayer's request for review by the full panel of the Ninth Circuit. Read [TaxNewsFlash](#)

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