

US IRS withdraws "Altera Memo" Directive on cost-sharing arrangement stock-based compensation

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In light of the United States (US) Ninth Circuit's decision, the Internal Revenue Service (IRS) Large Business and International Division (LB&I) formally withdrew the *Altera* Memo ([Directive LB&I-04-0118-005](#)) on 31 July 2019 in [LB&I-04-0719-008 \(Withdrawal of Directive LB&I-04-0118-005\)](#). The LB&I Commissioner noted that examiners should continue applying Treas. Reg. Sections 1.482-7A(d)(2) and 1.482-7(d)(3), including opening new examinations regarding cost-sharing arrangement (CSA) stock-based compensation (SBC) issues. LB&I stated that "these issues may be factually intensive, and transfer pricing teams should develop the facts to support their analysis and conclusions." The withdrawal memo also noted that Issue Teams should consult the Practice Network and Counsel for support in analyzing the issue and that LB&I will monitor further developments related to the Ninth Circuit's decision.

Altera Memo

On 12 January 2018, the LB&I Commissioner issued the *Altera* Memo, which directed audit teams not to initiate any new examinations for issues related to SBC in a CSA while the *Altera* case was on appeal to the Ninth Circuit. For pending CSA examinations, LB&I would halt issue development pending a decision if the taxpayer elected to extend the statute of limitations until *Altera* was resolved. See EY Global Tax Alert, [US IRS LB&I issues instructions for examiners on transfer pricing selection issues](#), dated 25 January 2018.

Altera

On 7 June 2019, in a 2-1 ruling, a Ninth Circuit panel reversed the Tax Court's holding in *Altera Corp. v. Commissioner*, 145 T.C. 91 (2015), and upheld a 2003 regulation requiring participants in a CSA to treat SBC costs as compensable. The Ninth Circuit concluded that the 2003 regulations were valid under the *Administrative Procedures Act*. The Ninth Circuit held that SBC costs should be treated as shared by participants in a CSA. See EY Global Tax Alert, [*US Ninth Circuit panel reverses Tax Court opinion in Altera, holding stock-based compensation to be a compensable cost under IRC Section 482*](#), dated 17 June 2019.

Following the issuance of the 7 June 2019 opinion, the taxpayer filed a petition for a rehearing “en banc.” The taxpayer is waiting on a decision regarding the petition for en banc review.

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