

Report on recent US international tax developments - 9 August 2019

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In light of the United States (US) Ninth Circuit Court of Appeals decision in *Altera Corp. v. Commissioner* in June 2019, the Internal Revenue Service (IRS)'s Large Business and International (LB&I) division formally withdrew its Altera Memo 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 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.

The original *Altera* memo ([Directive LB&I-04-0118-005 \(Cost Sharing Arrangement \(CSA\) Stock Based Compensation \(SBC\) Directive\)](#)) directed audit teams not to initiate any new examinations for issues related to stock-based compensation 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 elects to extend the statute of limitations until *Altera* was resolved.

On 7 June 2019, in a 2-1 ruling, a Ninth Circuit panel reversed the Tax Court's holding in *Altera Corp.* and upheld a 2003 regulation that requires 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. Following the issuance of the June 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.

The tax press this week reported that US President Trump signed the instruments of ratification to the four tax protocols amending US treaties with Luxembourg, Switzerland, Japan, and Spain. The US Senate gave its advice and consent to approve the long-delayed agreements on 16 and 17 July 2019.¹

Endnote

1. For background on the protocols, see EY Global Tax Alert, [US Senate approves four protocols updating the existing bilateral tax treaties with Luxembourg, Switzerland, Japan and Spain](#), dated 18 July 2019.

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