

IRS Has Begun Examining Stock-Based Compensation Cost-Sharing Arrangements

After the Supreme Court declined to review the Ninth Circuit's decision in *Altera Corporation v. Commissioner*, 926 F.3d 1061 (9th Cir. 2019) (*cert denied* — S. Ct. — (June 22, 2020)), the IRS has confirmed that it is examining taxpayers that did not include stock-based compensation costs as intangible development costs under Treasury Regulations §§ 1.482-7A(d)(2) and 1.482-7(d)(3) (the "Regulations"). As reported in a [prior post](#), the IRS lifted its administrative moratorium on examining such cost-sharing arrangements in the wake of the Ninth Circuit's reversal of the Tax Court's 2015 decision. More coverage of the *Altera* decision is available [here](#).

During an American Bar Association webinar, Douglas O'Donnell, commissioner of the IRS' Large Business & International ("LB&I") Division, confirmed that such examinations are underway and indicated that LB&I is collaborating with the IRS Chief Counsel Office to determine whether there is a need for additional guidance on technical issues that remain outstanding. While *Altera* is controlling only in the Ninth Circuit, O'Donnell indicated that the IRS believes that the decision will help its position in matters before the IRS Independent Office of Appeals and in any future litigation.

Companies that took positions whereby they excluded stock-based compensation from cost-sharing arrangements could come under audit given the IRS' focus on this issue. Likewise, any company that filed refund claims in response to the 2015 Tax Court decision invalidating the Regulations should expect to see its refund claim denied.

Please contact the [Ropes & Gray tax controversy team](#) with any questions you may have or if you would like any further information.