

June 29, 2020

U.S. Supreme Court Denies Altera's Petition for Writ of Certiorari

The U.S. Supreme Court Declines Review of Ninth Circuit Opinion Holding that Stock-Based Compensation Costs Must be Shared under Qualified Cost Sharing Agreements

On June 22, 2020, the U.S. Supreme Court denied Altera's petition for a writ of certiorari from a Ninth Circuit's opinion reversing a U.S. Tax Court decision. The Ninth Circuit opinion holds that U.S. corporations must allocate to their non-U.S. affiliates a portion of the cost of stock-based compensation of employees whose work benefits the corporations' non-U.S. affiliates pursuant to what is referred to as "qualified cost sharing arrangements".

In its petition for a writ of certiorari, filed February 10, 2020, Altera urged the Supreme Court to review the Ninth Circuit opinion which, according to Altera, violated bed-rock principles of administrative law. Altera also argued that the issue at hand is worth billions of dollars, will affect a large number of U.S. companies, and will have serious domestic and international tax consequences.

Amicus briefs were filed in support of Altera's petition by a group of major U.S. corporations (such as Cisco Systems, Inc., Apple Inc., Google LLC, Dell Technologies and Facebook, Inc.), a group of industry associations (including high-tech and software industry groups), a group of major accounting firms, and a group of former tax officials of foreign jurisdictions.

The Supreme Court's denial of Altera's petition means that the Ninth Circuit's opinion remains in force with respect to all cases within the circuit's jurisdiction. For more information about the Ninth Circuit's opinion and its implications, please see our memorandum entitled "Ninth Circuit Denies Altera's Petition for Rehearing," dated November 15, 2019 (available at <https://www.sullcrom.com/files/upload/SC-Publication-Ninth-Circuit-Denies-Alteras-Petition-for-Rehearing.pdf>).

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CONTACTS

New York

Ronald E. Creamer Jr.	+1-212-558-4665	creamerr@sullcrom.com
David P. Hariton	+1-212-558-4248	haritond@sullcrom.com
Jeffrey D. Hochberg	+1-212-558-3266	hochbergj@sullcrom.com
Donald L. Korb	+1-212-558-4000	korbd@sullcrom.com
Andrew S. Mason	+1-212-558-3759	masona@sullcrom.com
Andrew P. Solomon	+1-212-558-3783	solomona@sullcrom.com
David C. Spitzer	+1-212-558-4376	spitzerd@sullcrom.com
Davis J. Wang	+1-212-558-3113	wangd@sullcrom.com
S. Eric Wang	+1-212-558-3328	wangs@sullcrom.com
Isaac J. Wheeler	+1-212-558-7863	wheeleri@sullcrom.com
Assaf Y. Prussak	+1-212-558-4695	prussaka@sullcrom.com
Eran Levy	+1-212-558-3976	levyel@sullcrom.com

Washington, D.C.

Donald L. Korb	+1-202-956-7675	korbd@sullcrom.com
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London

Ronald E. Creamer Jr.	+44-20-7959-8525	creamerr@sullcrom.com
S. Eric Wang	+44-20-7959-8411	wangs@sullcrom.com
