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From: [REDACTED]

Sent: Wednesday, July 9, 2025 1:44:33 PM

To: [REDACTED]

Cc: [REDACTED]

Bcc:

Subject: Material Change in Scope of a CSA

Good afternoon,

You asked whether a change in one or more of the controlled participants in a cost sharing arrangement (“CSA”) constitutes a “material change in the scope of the CSA from its scope as of January 5, 2009” under Treas. Reg. § 1.482-7(m)(3).

Treas. Reg. § 1.482-7(m) provides transition rules for certain CSAs in existence on January 5, 2009, including a special rule for certain periodic adjustments. Specifically, Treas. Reg. § 1.482-7(m)(2)(ii) and (m)(3) provide that if there is a material change in the scope of the CSA from its scope as of January 5, 2009, the periodic adjustment rules in Treas. Reg. § 1.482-7(i)(6) apply (rather than the rules of Treas. Reg. § 1.482-4(f)(2) and (f)(6)) to platform contribution transactions (“PCTs”) that occur on or after the date of such material change.

The periodic adjustment regulations generally allow the IRS, in its discretion, to use the actual profits from a transferred intangible or PCT in making adjustments to payments for a transferred intangible or PCT. See Treas. Reg. §§ 1.482-4(f)(2) (for transferred intangibles) and -7(i)(6) (for PCTs). The periodic adjustment rules in Treas. Reg. § 1.482-7(i)(6) differ from those in -4(f)(2).

A material change in scope would subject any PCTs after that material change to a potential Treas. Reg. § 1.482-7(i)(6) periodic adjustment under the transition rules for existing qualified CSAs. Assuming for purposes of this analysis that the CSA at issue was a “qualified CSA” under the provisions of 1.482-7A, was in existence on or before January 5, 2009, and met the other transition rule requirements in Treas. Reg. § 1.482-7(m)(1), a material change in scope would be required for Treas. Reg. § 1.482-7(i)(6) to apply.

Under Treas. Reg. § 1.482-7(m)(3), a material change in the scope of the CSA “includes a material expansion of the activities undertaken beyond the scope of the intangible development area, as described in former Treas. Reg. § 1.482-7(b)(4)(iv).” “[F]ormer Treas. Reg. § 1.482-7(b)(4),” which was redesignated as Treas. Reg. § 1.482-7A(b)(4), lists six items that must be recorded in a document

contemporaneous with the formation of the CSA. Notably, “a list of the arrangement’s participants” is covered by Treas. Reg. § 1.482-7A(b)(4)(i) and thus entirely separate from a “material expansion in the scope of the CSA” under Treas. Reg. § 1.482-7A(b)(4)(iv). Had Treas. Reg. § 1.482-7(m)(3) been intended to include changes in the controlled participants, it could have also cross-referenced Treas. Reg. § 1.482-7A(b)(4)(i) (or paragraph (b)(4) generally). Thus, a change of controlled participant is not a “material expansion of the activities undertaken” in the intangible development area. This reading is also supported by the consistent use of the term “scope” throughout Treas. Reg. § 1.482-7 to refer specifically to the scope of intangible development activity. See Treas. Reg. §§ 1.482-7(d)(1); (d)(5), Ex. 3 (describing a patent development as “outside the scope of the CSA”); (g)(3) (identifying as a CUT reliability factor the similarity of the “scope” of the “subject intangible development”); (k)(1)(ii)(B) (contract must describe scope of the intangible development activity); (k)(2)(ii)(A) (same).

Although Treas. Reg. § 1.482-7(m)(3)’s statement that a material change in the scope of the CSA “would include a material expansion of the activities undertaken,” read in a vacuum, could imply that changes other than a change in intangible development activity could give rise to a material change in scope of the CSA, this is not the correct reading of the regulatory provision in context. The full sentence states that “A material change in scope would include a material expansion of the activities undertaken beyond the scope of the intangible development area, as described in [§ 1.482-7A(b)(4)(iv)].” “Include” here indicates that a material expansion of the CSA activities other than to facts described under Treas. Reg. § 1.482-7A(b)(4)(iv) may also constitute a material change in the scope of the CSA. But it does not imply a change of participants could constitute such a change in scope.

Moreover, the regulatory history of § 1.482-7(m)(3) indicates that a change in controlled participants is not otherwise a material change in the scope of the CSA. The Preamble to the Temporary Regulations under IRC 482 (74 FR 340), issued January 5, 2009 (the “2009 Preamble”) explains that in the Proposed Regulations under IRC 482 (70 FR 51116), issued on August 29, 2005, protections under the transition rules for existing qualified CSAs would be terminated in certain events, including a 50 percent or greater change in the ownership of interests in cost shared intangibles. However, that event was then removed from the temporary and final cost sharing regulations in response to commentators’ concerns that it defeated taxpayers’ legitimate expectation under the prior regulations. The 2009 Preamble states that the 2009 Temporary Regulations “do not terminate grandfather treatment [that is, protection under the transition rules] upon a 50 percent change of ownership.” The 2009 Temporary Regulations and the 2011 Final Regulations are the same with respect to Treas. Reg. § 1.482-7(m)(3). This suggests that the drafters had considered changes in controlled participants as an event that would terminate protections under the transition rules but ultimately chose not to include this event.

Thanks,

[Redacted signature block]