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# *Ninth Circuit withdraws its July 24 ‘Altera’ opinion*

August 8, 2018

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## *In brief*

On August 7, 2018, the US Court of Appeals for the Ninth Circuit, on its own motion, withdrew its July 24, 2018, opinion in *Altera Corp. v. Commissioner*.

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## *In detail*

On July 24, 2018, the Ninth Circuit entered a judgment holding that the cost sharing regulations issued in 2003 validly required stock-based compensation to be included in the pool of development costs shared under a cost sharing arrangement.

The Ninth Circuit panel was split 2-1. Judge Stephen Reinhardt, one of the judges who voted to uphold the regulations’ validity, died before the July 24 opinion was issued. The majority opinion stated that Judge Reinhardt had formally concurred with the opinion prior to his death. For details regarding the original (now withdrawn) Ninth Circuit opinion, please see our [Tax Insight](#) dated July 27.

On August 2, 2018, Judge Susan Graber was appointed to replace

Judge Reinhardt on the Ninth Circuit panel assigned to the case. In its August 7 order withdrawing the July 24 opinion, the Ninth Circuit stated that it was withdrawing that opinion to “allow time for the reconstituted panel to confer” on the appeal. No other reasons for the withdrawal were given, and the procedure and timeline for consideration by the reconstituted Ninth Circuit panel are unclear at this point.

## *The takeaway*

Many taxpayers were considering their positions relating to stock-based compensation in cost sharing arrangements in light of the Ninth Circuit’s July 24 decision. The Ninth Circuit’s withdrawal of the July 24 opinion in *Altera* means that the opinion does not represent authority on the stock-based compensation

issue, or on other matters it addressed. The status is as though the July 24 opinion never had been issued.

## Let's talk

If you would like to discuss the impact that the Ninth Circuit's withdrawal of its *Altera* opinion may have on your company's transfer pricing strategies, please contact:

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