



Pat Smith Quoted in Tax Notes on Government Response To Taxpayers Petition for Rehearing En Banc in Ninth Circuit Altera Case.

PRACTICE AREAS

Tax

Tax Accounting

August 30, 2019

IPB attorney Pat Smith was quoted in a *Tax Notes* article on the government's response to the petition for rehearing *en banc* that was filed by the taxpayer in the Ninth Circuit *Altera* case. *No Basis for Rehearing in Altera, Government Argues*.

Patrick J. Smith of Ivins, Phillips & Barker Chtd. told *Tax Notes* he found the government's *Chenery* argument "extremely unpersuasive."

Smith said there was a *Chenery* problem because in the preambles to the proposed and final regs, Treasury and the IRS cited the language in the 1986 Conference Report to support the proposition that sharing stock-based compensation is what unrelated parties would do.

By contrast, the government and the Ninth Circuit majority relied on that language for the proposition that it doesn't matter whether unrelated parties would agree to share stock-based compensation, Smith said.

Also, Treasury and the IRS never expressed the view that cost-sharing arrangements represent transfers of intangibles so as to make the commensurate with income standard directly applicable to cost-sharing arrangements, Smith said. However, the conclusion that cost-sharing arrangements should be considered transfers of intangibles "was a crucial part of the reasoning in the Ninth Circuit's majority opinion in upholding the validity of the regulations," he noted.