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IRS Issues Guidance to Multiemployer Retirement Plans Receiving Special Financial Assistance

The IRS [announced](#) new guidance regarding multiemployer qualified retirement plans for receiving special financial assistance as permitted by the American Rescue Plan Act of 2021. In [Notice 2021-38](#), the IRS provides guidance under Section 432(k) to sponsors of multiemployer defined benefit pension plans that are required to reinstate certain previously suspended benefits as a condition of receiving special financial assistance. (Section references are to the Internal Revenue Code of 1986, as amended, and Treasury regulations promulgated thereunder.) The Notice specifically addresses the reinstatement of previously suspended benefits, provides guidance on make-up payments and discusses the minimum funding requirements for a multiemployer plan that receives special financial assistance.

IRS Issues Legal Memorandum on Transfer Pricing Aspects of Stock-Based Compensation

The IRS, in legal memorandum [AM 2021-004](#), discusses issues related to transfer pricing examinations of stock-based compensation (SBC) costs involving certain cost sharing agreements. The memorandum specifically addresses reverse claw-back provisions in non-SBC cost sharing agreements that obligate cost sharing participants to true-up unshared SBC costs from prior years in the year of a triggering event, specifically when the SBC regulation is upheld by a court. These regulations address the treatment of SBC as an intangible development cost (IDC). The IRS concludes that (1) it may make allocations to adjust the results of a cost sharing transaction (CST) so that the results are consistent with an arm's length result, including any allocations to make each controlled participant's IDC share equal to that participant's reasonably anticipated benefits share and such allocation will be reflected for tax purposes in the year in which the IDCs were incurred, (2) if the IRS adjusts the results of a CST for a taxable year to account for SBC costs, that adjustment should be treated as reducing the amount of any reverse claw-back true-up obligation by a corresponding amount, thereby avoiding an overpayment of the SBC costs and (3) if allocations to adjust the results of a CST in the year the IDCs were incurred are not possible for certain years, the IRS may make other adjustments, if necessary, to reflect the contract or to ensure that the non-SBC cost sharing agreement produces results that are consistent with an arm's length result.



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