GIBSON DUNN Bloomberg Tax

IRS Settlement Indicates Continuation of M&A Carveout Fights

Oct. 24, 2025 | Saul Mezei and Terrell Ussing

The US Tax Court might have resolved several issues surrounding the platform contribution of recently acquired intangible property and other resources to a pre-existing cost-sharing arrangement in *Microsemi v. Commissioner* in a manner that would have provided guidance to taxpayers and the IRS going forward. But that transfer pricing case recently settled on the proverbial courthouse steps.

Taxpayers with cost-sharing arrangements must accept the lingering uncertainty and anticipate that the IRS will continue to scrutinize platform contribution transaction payments when folding in acquisitions to existing cost-sharing arrangements.

Those taxpayers should carefully consider the issues below and document their conclusions in contemporaneous transfer-pricing reports that comply with the statute and regulations addressing accuracy-related penalties. This is particularly important given that the IRS has increasingly asserted penalties whenever it makes transfer-pricing adjustments.

Cost-sharing arrangements, which allow two or more participants to share costs to co-develop intangible property (such as cost-shared intangibles), have long been a popular way for multinational enterprises to achieve tax and transfer-pricing administrative benefits.

A cost-sharing participant often will contribute intangible property or other resources (the platform contribution) to the arrangement at the outset or add more along the way to help develop cost-shared intangibles.

US transfer pricing regulations define a platform contribution as something that "is reasonably anticipated to contribute to developing cost shared intangibles."

Prior regulations referred to the subject of the contribution as "pre-existing intangible property" before the Treasury Department revised the regulations to broaden the definition beyond just property. The amount non-contributing participants pay is referred to as a platform contribution transaction payment under the current regulations (and formerly was known as a buy-in payment).

For decades, the IRS focused its enforcement efforts on such upfront payments, resulting in multiple litigated cases such as *Veritas Software Corp. v. Commissioner*, *Amazon.com Inc. v. Commissioner*, and *Facebook.com v. Commissioner*—which all involved payments owed at the inception of the cost-sharing arrangement.

The upfront-payment issue also arises regularly with ongoing cost-sharing arrangements, where a US participant acquires a target company and then folds the target company's resources, capabilities, and rights (such as intangible property) into the US participant/acquiror's existing cost-sharing arrangement. The acquisition price method is tailor made for this circumstance, but taxpayers and the IRS have disagreed over how to apply the method.

The method takes the price paid to acquire the stock or assets of a target company (that is, the acquisition price), increases it by the amount of liabilities acquired or assumed, and decreases it by the value of the target's tangible property and by the value "of any other resources, capabilities, or rights" that aren't covered by a platform contribution transaction.

The remaining amount (called the adjusted acquisition price) is then used to determine the arm's-length charge for the platform contribution transaction.

Although the acquisition price method is straightforward in concept, conflicts between the IRS and taxpayers arise because of disputes over whether the third-party acquisition price is properly reduced by amounts taxpayers have determined relate to "other resources, capabilities, or rights not covered" by a platform contribution transaction.

Stated differently, taxpayers carve out value they view as attributable to items that aren't expected to contribute to developing cost-shared intangibles—items that can't fall within the regulatory definition of a platform contribution.

Two contentious reductions to the acquisition price are for control premiums (along with the value of the target's goodwill and going concern and certain anticipated synergies, which present related, but different issues) and the value of certain business functions. In our experience, the IRS has often categorically refused such exclusions.

Whether a control premium—the amount paid above the non-controlling price (such as the price for a single share acquired in a market transaction) to induce a transfer of control by the target company's existing owners—exists in a given acquisition is a factual question.

When a control premium exists, taxpayers can argue that it should be excluded from computations of the platform contribution transaction payment because it isn't a resource, capability, or right that is reasonably expected to contribute to developing cost-shared intangibles.

Although aware of the potential for adjustments for control premiums and other types of items (such as synergies) in applying the acquisition price method, the Treasury Department didn't grapple with such adjustments in defining the acquisition price method in its revised regulations. It instead stated in the preamble that the need for these types of adjustments might affect whether the acquisition price method is the best method to price the platform contribution.

In our experience, the IRS likewise has chosen not to grapple with specifics, opting instead to broadly dispute the existence of identifiable premiums paid for control, or to contend that the value of such "control" doesn't represent a standalone resource, capability, or right separate and apart from the underlying business assets.

Whether certain routine business functions of the target company are anticipated to contribute to developing cost-shared intangibles under the acquiror's existing cost-sharing arrangement is also a factual question. If a target company's sales and distribution functions aren't a platform contribution and can be reliably valued at the time of the acquisition, then taxpayers can argue for carving out the value of those functions when computing the platform contribution transaction payment.

As with control premiums, the IRS has resisted such reductions and might view any substantial reduction in the acquisition price for those business functions as inconsistent with the acquiror's reason for buying the target company and as supporting the premiset hat the acquisition price method isn't the best method.

When applying any transfer-pricing method, the regulations provide that reliable adjustments must be made to enhance the comparability of the controlled and uncontrolled transactions. When the facts support such adjustments for a control premium or routine business functions in the acquisition-price-method context, the IRS's broad refusal to accept such adjustments will continue to create risk for taxpayers attempting to faithfully and reliably apply the acquisition price method.

Given the uncertainty and risk, taxpayers should carefully and thoroughly document any such adjustments before filing returns reporting the platform contribution transactions. This will help maximize the chances that the IRS doesn't assert penalties should it propose adjustments and that penalties aren't sustained in an administrative appeal or in litigation.

The case is Microsemi Corp. v. Commissioner, T.C., No. 36721-21, joint status report 9/15/25.

This article does not necessarily reflect the opinion of Bloomberg Industry Group, Inc., the publisher of Bloomberg Law, Bloomberg Tax, and Bloomberg Government, or its owners.

AUTHOR INFORMATION

Saul Mezei and **Terrell Ussing** are partners in Gibson Dunn's Washington D.C. office and member of the firm's tax controversy and litigation practice group.