

US Court of Appeals rules against Liberty Global citing economic substance doctrine



April 30, 2026

In brief

What happened?

A three-judge panel of the United States Court of Appeals for the Tenth Circuit (Circuit Court), in a 2-1 [opinion](#) filed April 21, 2026, affirmed the District of Colorado's judgment denying Liberty Global, Inc.'s refund claim arising from its 2018 Project Soy' transactions. The Circuit Court held that the codified economic substance doctrine in Section 7701(o) was relevant to Project Soy and could be applied to disregard the first three steps of the transaction, which the taxpayer stipulated did not meaningfully change its economic position or serve a substantial non-tax purpose.

Why is it relevant?

The Circuit Court held that the economic substance doctrine is 'relevant' where a taxpayer applies the Code provisions to obtain a tax benefit not intended by Congress, and that codification did not narrow

application of the doctrine to exclude those transactions. It also signals that courts could analyze an integrated series of steps as a single transaction under Section 7701(o)(5)(D), even where some component steps resemble basic business transactions in isolation.

Actions to consider

Tax departments should reassess transactions that generate favorable tax benefits that may be viewed as not intended by Congress and their underlying documentation. Specifically, they should revisit documentation of non-tax business purposes, the potential analysis by the IRS or a court of the economic substance of individual steps of a transaction as well as the transaction in its entirety, and whether a claimed result could be viewed as relying on a statutory gap.

In detail

Background

For a discussion of the US District Court's decision granting summary judgment in favor of the government that the transaction at issue (Project Soy) lacked economic substance, refer to this [PwC Tax Insight](#).

The economic substance doctrine in Section 7701(o) provides that, when the economic substance doctrine is relevant to a transaction, the transaction has economic substance only if (1) the transaction changes in a meaningful way the taxpayer's economic position and (2) the taxpayer has a substantial business purpose for entering into the transaction.

Circuit Court's analysis

The Circuit Court majority narrowed its opinion to a single question: whether the economic substance doctrine is 'relevant' to Project Soy. The majority rejected Liberty Global's theory that economic substance is merely an interpretive tool that cannot disallow benefits where a transaction complies with the Code's literal terms. The court noted that the doctrine historically has been applied to disallow tax benefits stemming from economically meaningless transactions that "comply with the literal terms of the tax code" and that Congress instructed courts to determine relevance "in the same manner as if [Section 7701(o)] had never been enacted."

The majority rejected Liberty Global's argument that literal or 'mechanical' compliance with the Code bars application of the doctrine. Relying on Tenth Circuit cases *Blum v. Comm'r*, *Sala v. United States*, *Rogers v. United States*, *Bohrer v. Comm'r*, and the Supreme Court ruling *Gregory v. Helvering*, the opinion stated that courts have long disregarded transactions that meet the Code's literal terms when they lack economic substance. Section 7701(o)(5)(A), in the Circuit Court's view, codified that same common-law doctrine rather than narrowed it.

Next, the court addressed the taxpayer's argument that Congress meant to exclude from Section 7701(o) certain kinds of steps used in Project Soy, such as Section 351 transactions, entity classifications, and capitalization choices. The majority did not definitively decide whether any category of 'basic business transaction' could ever fall outside the doctrine. Instead, it said the District Court's second rationale is enough: the relevant transaction for analysis was the entirety of Project Soy, not isolated steps. Under Section 7701(o)(5)(D), 'transaction' includes a series of transactions, and precedent requires determining which transaction controls the inquiry. Here the steps occurred over four days, were tightly integrated,

and Liberty Global admitted the first three likely would not have occurred except in contemplation of step four. On that basis, the Circuit Court held that Project Soy, as a whole, was not a basic business transaction but an integrated structure.

The Circuit Court then reiterated that Liberty Global stipulated that the first three steps failed both prongs of Section 7701(o)(1); they did not meaningfully change the taxpayer's economic position and served no substantial non-tax purpose. Once those steps are disregarded, the earnings and profits arising from the transaction disappears, the Section 245A deduction is not applicable, and step four yields taxable gain.

Observation: The economic substance doctrine can override a mechanical application of the Code when the benefit is not one Congress intended and the use or presence of basic business transactions in achieving that benefit would not prevent the economic substance doctrine from applying. When evaluating basic business transactions, the Circuit Court looked to the overall steps rather than individual ones. Thus, for example, certain 'angel list' transactions might not be easily exempted if part of a broader plan. Basic business transactions could be more difficult to rely upon going forward unless a transaction is truly 'basic.'

Observation: The majority opinion strengthens the government's position when applying Section 7701(o) to integrated cross-border tax planning when that planning involves internal transactions that create earnings and profits without arguably changing the overall economics of the group. The appendix diagrams in the Circuit Court opinion underscore how integrated Liberty Global's arrangement was, and future courts could find that kind of sequencing persuasive when deciding whether to collapse steps into one transaction.

Court's conclusion

In affirming the District Court's decision, the Circuit Court stated that Section 7701(o) is relevant when taxpayers mechanically use the Code to obtain benefits not intended by Congress, that Liberty Global did exactly that, and that the taxpayer's admitted failure to satisfy either of the two prongs of the economic substance test in steps one through three defeats the claimed Section 245A deductions. The majority described Project Soy as a tightly integrated, four-step tax-avoidance plan designed to exploit a "last day of year rule/mismatch" in the tax Code's international provisions so that Liberty Global could claim a large Section 245A deduction while avoiding corresponding GILTI or subpart F inclusions on the earnings and profits used to support that deduction. Once the first three steps were disregarded, the taxpayer could not sustain the claimed deduction.

Observation: The Circuit Court's holding could lead to future disputes over what constitutes a benefit 'not intended by Congress.' That standard could be difficult to administer consistently where statutory text is detailed, technical, and arguably accommodates the very result the government has challenged.

Observation: The dissenting opinion by Judge Eid could help taxpayers develop counterarguments against future IRS assertions of the economic substance doctrine. In particular, the dissent reframed the issue from 'Did the transaction lack substance?' to 'Does this Code provision make substance relevant at all?' It also focused on determining relevance based on whether what the taxpayer stated actually occurred by citing several cases that find economic substance to be relevant when realities do not match stated steps. That is, were the steps 'shams' or in substance are something other than what was described? That distinction could prove to be particularly important in disputes involving classification elections, timing choices, and congressionally sanctioned formalism.

See also

Tax Insight: [US District Court applies economic substance doctrine in Liberty Global](#) (November 13, 2023)

Let's talk

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