



# TaxNewsFlash

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## Tenth Circuit: Taxpayer's refund claim denied under economic substance doctrine

The U.S. Court of Appeals for the Tenth Circuit on April 21, 2026, rejected a taxpayer's claim that the codified economic substance doctrine in section 7701(o) was not relevant to a transaction it undertook and affirmed the judgement of the federal district court denying the taxpayer's refund claim.

The case is: *Liberty Global Inc. v. Commissioner*, No. 23-1410 (April 21, 2026). Read the Tenth Circuit's [decision](#)

The Tenth Circuit's decision was joined by two judges of the three-judge panel, with one judge writing a separate dissenting opinion.

### Summary

Section 245A, created by the 2017 Tax Cuts and Jobs Act (TCJA), permits certain U.S. corporate taxpayers to obtain a 100% deduction for dividends from their foreign subsidiaries out of foreign earnings and profits (E&P). However, temporary regulations under section 245A issued on June 18, 2019, limited the deduction under section 245A for dividends out of E&P created by certain extraordinary transactions that occurred during the period between the effective dates of section 245A (dividends received after December 31, 2017) and GILTI (tax years beginning after December 31, 2017).

The taxpayer, a U.S. subsidiary of a British media conglomerate, petitioned the federal district court in Colorado in November 2020 for a refund of approximately \$109 million in taxes (including penalties and interest) on the basis that the temporary regulations were invalid. In particular, the taxpayer claimed that it met the requirements under section 245A to deduct income from a transaction that occurred in December 2018, but because the temporary regulations were made retroactive, it did not receive the full deduction.

The refund suit was resolved through two rounds of summary judgment motions—the first concerning the validity of the temporary regulations, and the second concerning the applicability of the economic substance doctrine.

In the first round of summary judgment motions, the district court agreed with the taxpayer and held that the temporary regulations were procedurally invalid because they were issued without notice and comment.

In the second round of summary judgment motions, the district court agreed with the government that the taxpayer's refund claim must be disallowed under section 7701(o)'s codified economic substance doctrine.

The taxpayer conceded that all aspects of the first three steps of its 2018 transaction failed both prongs of the codified economic substance doctrine but argued that the economic substance doctrine was not "relevant" to its transaction because the economic substance doctrine does not apply to "basic business transactions," such as corporate organizations under section 351 and entity selections.

The district court rejected the taxpayer's argument, noting that section 7701(o) contained no categorical exceptions and, furthermore, the taxpayer's transaction was not a basic business transaction but was, instead, a highly structured tax planning exercise. The district court then concluded that the economic substance doctrine is "relevant" whenever "a taxpayer seeks to claim tax benefits, unintended by Congress, by means of transactions that serve no economic purpose other than tax savings." Applying that standard, the district court concluded the doctrine was relevant because the taxpayer exploited a legislative mismatch through transactions that served no economic purpose other than tax savings and, thereby, "violated congressional intent."

The Tenth Circuit affirmed the district court's conclusion that the taxpayer was not entitled to any of the section 245A deductions it claimed with respect to its 2018 transaction. The Tenth Circuit analyzed the "narrow question" that it said the taxpayer had appealed—specifically whether the codified economic substance doctrine was relevant to the taxpayer's transaction at issue. The Tenth Circuit majority opinion determined that the economic substance doctrine is relevant "to attempts by taxpayers to mechanically utilize the provisions of the Tax Code to obtain a benefit not intended by Congress" and "[t]hat is exactly" what the taxpayer did by undertaking the transaction at issue.

The dissenting judge concluded, however, that the district court's failure to conduct a threshold relevancy inquiry contradicted the clear statutory language of section 7701(o), as well as applicable precedent, and thus constituted reversible error. The dissenting judge found that the district court interpreted section 7701(o) as essentially providing that the economic substance doctrine applies to all transactions, which was erroneous. Rather, the economic substance doctrine applies only when another Code provision makes economic reality or taxpayer motive relevant, and because the taxpayer's transaction did not implicate any such provision, the economic substance doctrine did not apply.

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