The Shifting Ground of Subchapter K: Economic Substance in Focus

By Sebastian Voth*

I. Introduction

The Internal Revenue Service's (IRS's) stance on basis shifting among related partnerships is far from settled. While the Service issued guidance this year indicating its intent to withdraw certain basis-shifting regulations and to offer penalty relief for failure to disclose related transactions, it notably retained a critical revenue ruling that continues to apply the codified economic substance doctrine to these transactions. The result? Significant uncertainty for practitioners and clients alike.

This lingering uncertainty raises several critical questions:

1. What does the economic substance doctrine require, particularly in its codified form under Code Sec. 7701(o),[1] and how does it apply to basis shifting among related partnerships?
2. What motivated Congress to codify the doctrine, and how has codification affected IRS enforcement strategies?
3. What trends are emerging in tax litigation and IRS guidance that may affect these transactions?
4. What should clients with related partnerships understand about the current enforcement risks?
5. What proactive steps can taxpayers and advisors take to minimize audit exposure and strengthen the defensibility of their transactions?

To frame this discussion, we begin with a brief history of the economic substance doctrine and its evolution through administrative and judicial interpretation.

II. The Evolution of the Economic Substance Doctrine

We know that the Internal Revenue Code provides detailed rules that specify how to compute taxable income. In theory, this means that taxpayers generally may plan their transactions in reliance on these rules to determine the federal income tax consequences arising from their transactions. But is literal compliance with the Code enough? It depends. And that is how the common law anti-abuse judicial doctrines were first developed.

Over time, courts developed several doctrines that can be applied to deny the tax benefits of a tax-motivated transaction, even though the transaction may satisfy the

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literal requirements of a specific tax provision. That is where the economic substance doctrine comes into play. And you will often hear that it is a cardinal principle of taxation that a transaction's tax consequences depend on its substance, not its form, unless Congress has made clear otherwise.[2]

But when did this approach start? Most trace the origins of the economic substance doctrine to the landmark Supreme Court case of *Gregory v. Helvering*.[3] The Supreme Court in no uncertain terms recognized that taxpayers may minimize their taxes as long as the transactions comport with the intent of Congress. In *Gregory*, the taxpayer had a corporation with highly appreciated shares of a different corporation. The taxpayer set up a new corporation, transferred shares from the different corporation (*i.e.*, the one with the highly appreciated shares) to the new corporation, liquidated the new corporation, and distributed the appreciated shares to the taxpayer.[4]

On paper: (1) the reorganization by which the shares were acquired was a tax-free event; and (2) the liquidation of the new corporation was a tax-free event. The Supreme Court stated: "[w]hat do we find? Simply an operation having no business or corporate purpose-a mere device which put on the form of a corporate reorganization as a disguise for concealing its real character, and the sole object and accomplishment of which was the consummation of a preconceived plan, not to reorganize a business or any part of a business, but to transfer a parcel of corporate shares to the petitioner."[5] That judicial statement laid a strong foundation for the economic substance doctrine.

What has the Tax Court stated about economic substance? It has described the doctrine as:

> The tax law, however, requires that the intended transactions have economic substance separate and distinct from economic benefits achieved solely by tax reduction. The doctrine of economic substance becomes applicable, and a judicial remedy is warranted, where a taxpayer seeks to claim tax benefits, unintended by Congress, by means of transactions that serve no economic purpose other than tax savings.[6]

A. Evaluating Economic Substance Through Industry Norms and Nontax Purpose

Key to the determination of whether a transaction has economic substance is that the transaction must be rationally related to a useful nontax purpose that is plausible in light of the taxpayer's conduct and useful in light of the taxpayer's economic situation and intentions.[7] That analysis contains several important terms and phrases that must be considered: (1) rationally related; (2) useful nontax purpose; (3) plausible in light of the taxpayer's conduct; and (4) useful in light of the taxpayer's economic situation and intentions.

So how do courts tend to approach this? One way of doing this is by ensuring that both the utility of the stated purpose and the rationality of the means chosen to effectuate such purpose must be evaluated in accordance with commercial practices in the relevant industry.[8] And a rational relationship between purpose and means ordinarily will not be found unless there was a reasonable expectation that the nontax benefits would be at least commensurate with the transaction costs.[9]

In evaluating the substance of a transaction, courts often evaluate the nontax aspects of the transaction against the commercial practices in the relevant industry. So do not be surprised if the IRS relies on an expert to support its position regarding the objective component of the transaction. But this also presents an opportunity for taxpayers. Taxpayers should leverage their expertise and that of their advisors in their area of business. Business realities should be given weight to counter IRS assertions that certain transactions lack economic substance. This is an opportunity that many taxpayers often miss.

B. The Limits of Regulatory Compliance in Economic Substance Analysis

This inevitably leads to consideration of compliance with IRS administrative guidance or Treasury Regulations. Does compliance with the literal requirement espoused by the government suffice to preclude the IRS from arguing that a transaction lacks economic substance? I have seen cases where the IRS will state that mere compliance with the regulations does not create a safe harbor and that it does not preclude the IRS from asserting that economic substance doctrine may apply. In short, economic substance allows the IRS to attack the transaction from a different angle and arguably ask a court to consider whether it is appropriate to condone a certain transaction. This is where proper planning and ensuring that actual business purposes are contemporaneously documented come into play to prevent further issues from arising.

C. Divergence in Economic Substance Jurisprudence

And how did the economic substance doctrine evolve? Well, over time, there was a lack of uniformity regarding the proper application of the economic substance doctrine.[10]

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Some courts applied a conjunctive test, requiring the taxpayer to establish the presence of both[11]:

1. *Objective Prong*: Whether the transaction had economic substance (*i.e.*, potential for pre-tax profit) beyond the creation of tax benefits.
2. *Subjective Prong*: Whether the taxpayer had a genuine, nontax business purpose for entering the transaction. A key factor of the subjective prong is whether the taxpayer would have entered the transaction, absent the tax benefits. And courts have explained that a nontax purpose must be an actual motivation, not a theoretical justification for the transaction to survive judicial scrutiny.

Other courts applied a disjunctive test, finding that a transaction would be respected if it had either objective economic substance or a legitimate business purpose.[12]

A third approach regards economic substance and business purpose as "simply more precise factors to consider" in determining whether a transaction has any practical economic effects other than the creation of tax benefits.[13]

These different approaches are one of the reasons why Congress decided to codify the economic substance doctrine.

III. The Economic Substance Doctrine: Codified and Increasingly Invoked

The codification of the economic substance doctrine (CESD) reflected Congress's intent to promote greater clarity and consistency in its application. The aim was to enhance the doctrine's effectiveness in discouraging transactions that produce unintended tax results without meaningful economic effect.

A. Codification and Consequences: The Expanded Reach of Code Sec. 7701(o)

Notably, Congress adopted a conjunctive two-pronged test under Code Sec. 7701(o), requiring both a business purpose independent of tax avoidance and economic substance, which means a meaningful change in the taxpayer's economic position. This codification establishes a stricter standard than certain pre-codification approaches, which treated satisfaction of either prong as sufficient.

In addition, Congress imposed a strict liability penalty for transactions to which the codified economic substance doctrine applies.[14] Significantly, Congress stated that "[n]o exceptions (including the reasonable cause rules) to the penalty are available … outside opinions or in-house analysis would not protect a taxpayer from imposition of a penalty if it is determined that the transaction lacks economic substance."[15] This means reliance on external legal or accounting advice does not shield taxpayers from penalties where the doctrine applies.

The penalty is further increased to 40% if the transaction is not adequately disclosed to the IRS under Code Sec. 6662(i). To date, there is no judicial guidance defining what constitutes adequate disclosure for purposes of this enhanced penalty under the CESD. This lack of clarity adds an additional layer of uncertainty and risk for taxpayers engaging in complex transactions.

B. Code Sec. 7701(o) Preserves the Validity of Routine Business Transactions

While the codified version under Code Sec. 7701(o) provides a standardized definition of economic substance, it preserves the judiciary's flexibility in other respects. Congress was explicit that codification was not intended to alter the tax treatment of certain basic business transactions that have long been respected, even when the choice between economically meaningful alternatives is driven primarily or entirely by tax considerations.

Among the routine business choices that Congress indicated remain valid are:

1. The decision to capitalize a business with debt or equity;
2. A U.S. person's choice between using a foreign or domestic corporation for foreign investments;
3. Corporate organizations or reorganizations that qualify under subchapter C; and
4. The use of related-party entities, so long as the arm's-length standard under Code Sec. 482 and other applicable doctrines is satisfied.[16]

C. The Threshold Relevance Inquiry Under Code Sec. 7701(o)

Importantly, Code Sec. 7701(o)(5)(A) states that the doctrine applies "[i]n the case of any transaction to which the economic substance doctrine is relevant," and Code Sec. 7701(o)(5)(C) provides that this determination is to be made "as if [section 7701(o)] had never been enacted." This language has prompted debate about whether courts must first conduct a threshold inquiry into the doctrine's relevance before applying the two-pronged test.

Taxpayers and amici have advanced the position that courts should make this threshold determination by looking to pre-codification case law. In some cases, courts declined to apply the doctrine to transactions where

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Congress had already provided for favorable tax treatment regardless of economic substance, or where judicial precedent had long accepted the structure at issue. This approach, if successful, could allow certain transactions to bypass the codified test altogether.

But that was not the case in *Liberty Global*, where the taxpayer argued that the statute's prefatory language required a preliminary analysis of whether the doctrine was relevant to the transaction in question.[17] The court rejected this reading, holding instead that the doctrine's relevance is coextensive with the application of the statute itself.[18] In other words, once a court is analyzing economic substance under Code Sec. 7701(o), the relevance question is already resolved as part of that process. The court declined to adopt a separate threshold inquiry, a decision that is currently on appeal before the Tenth Circuit.

The threshold issue is currently squarely before the Tax Court in the *Patel* case, which has received attention in the press.[19] Given that I litigated the *Patel* case on behalf of the government, I will not offer any commentary. Suffice to say that the Court in *Patel* first determined that the petitioners' arrangement did not constitute insurance and upheld the IRS's deficiency determinations.[20] The Court did, however, defer ruling on the codified economic substance penalties. Instead, in an order dated March 7, 2024, the Court asked the parties to brief whether the codified economic substance requires a threshold relevancy determination and, if so, under what circumstances it is relevant. The parties and multiple amici filed several briefs, and a special hearing took place in Washington, D.C. regarding this issue. As of the submission of this article, the Court in *Patel* has yet to issue an opinion regarding these aspects of the CESD.

That said, this area of law is still evolving. While *Liberty Global* adds weight to the view that no independent threshold step is required, other courts may view the statutory language differently, particularly where longstanding precedent or congressional intent may signal that economic substance should not apply. The IRS has taken the position that economic substance is a fact-intensive doctrine and that its applicability depends on the totality of the circumstances surrounding each transaction. Courts historically approached the doctrine this way, often without invoking a separate relevance threshold.

Code Sec. 7701(o) does provide two express carve-outs:

1. Personal transactions of individuals not connected to a trade or business; and
2. Transactions outside Subtitle A of the Internal Revenue Code, such as those involving estate and gift taxes.

Beyond these, however, no categorical exemptions exist, and the codified doctrine continues to function as a flexible, facts-and-circumstances test. While the two-pronged standard is now uniform, its application continues to be shaped by judicial interpretation, pre-codification precedent, and the specific statutory context in which the transaction arises.

For taxpayers and advisors, this underscores the importance of carefully analyzing not just the form and purpose of a transaction, but also its broader legal and regulatory landscape. The question of whether economic substance applies remains deeply contextual, and recent case law continues to define its contours.

Just as the doctrine has continued to evolve, so has the IRS's guidance regarding partnerships and basis shifting.

IV. The Evolving Landscape of Basis Shifting and Partnerships

A. The IRS's 2024 Position: Rev. Rul. 2024-14

We start with Rev. Rul. 2024-14, which was issued on June 17, 2024 (Basis Shifting Revenue Ruling). It relies on the CESD to challenge three basis shifting transactions between related parties.

The ruling describes a domestic corporation (C) operating a trade or business through various subsidiaries, which include various subsidiaries in which C directly or indirectly holds controlling financial interests (C Subsidiaries). The C Subsidiaries include, among other entities, four partnerships. The C Subsidiaries own various depreciable or amortizable assets used in C's trade or business. C issues financial statements for its trade or business that report these assets and liabilities of the C Subsidiaries.

The ruling then provides situations that fall into three categories: (1) transfer of a partnership interest to a related party; (2) distribution of property to a related party; and (3) liquidation of a related partnership (Situations 1–3). The ruling concludes that these transactions represent an improper use of partnership rules to artificially inflate the basis of underlying assets without producing any meaningful economic change. According to the IRS, such transactions are designed to generate increased depreciation deductions or reduced gain on the sale of assets, despite having little or no substantive economic effect.

The ruling grounds its analysis in longstanding jurisprudence, emphasizing that the codified economic substance doctrine may apply despite literal compliance with a statute. It draws on cases like *Knetsch*, *Coltec Industries*,

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and *Gregory* to reinforce that statutory language will not be interpreted to grant tax benefits disconnected from economic reality unless Congress clearly intended such results. Taken together, these precedents reflect a judicial reluctance to attribute statutory meaning to Congress if doing so would extend tax benefits untethered from economic substance.[21]

So why did the ruling conclude that Situations 1–3 lack economic substance? It first concludes that the transactions in Situations 1–3 have a negligible effect on C's economic position for purposes of the first prong under Code Sec. 7701(o)(1)(A). The ruling concludes that the transactions merely shift ownership of property among commonly controlled entities without effecting a meaningful change in the flow of economic benefits or creating a genuine opportunity for profit.[22] The taxpayer's beneficial interest in the C Subsidiaries and their assets remains effectively unchanged per the IRS, aside from the anticipated reduction in aggregate federal income tax liability.[23] As described in the ruling, the transactions were "designed to generate" basis increases, and those basis increases "would always ... have overshadowed" any economic gain, including any benefit associated with cost savings.[24] Although the ruling acknowledges possible administrative efficiencies from reducing intercompany account complexity, it concludes that such efficiencies do not meaningfully alter the overall economic position of the related entities apart from the federal tax consequences.

In terms of the second prong (*i.e.*, the subjective one), the ruling first concedes that the stated purposes of achieving certain cost savings and administrative efficiencies may indeed be legitimate nontax economic purposes. But that's about it. Instead, the ruling draws what it describes as reasonable inferences from the design of the transactions and their anticipated results. It concludes that any cost savings were minimal next to the guaranteed substantial basis increase without a corresponding risk of economic loss (in fact, one that is called *de minimis*) compared to the Federal income tax benefit. As such, the ruling concludes that the transactions under Situations 1–3 lack economic substance.

Having reached that conclusion, the ruling emphasizes that the transactions will be disregarded and emphasized the strict liability nature of penalties under the CESD. To the extent the transactions were not adequately disclosed, the penalties are increased from 20 to 40 percent. And remember, Congress established that no reasonable cause applies to CESD penalties. The ruling further remarks that other anti-abuse doctrines such as substance over form and step transaction may apply. This is quite common as the anti-abuse doctrines (economic substance, substance over form, and step transaction) are often seen as part of a Venn diagram.[25]

The Basis Shifting Revenue Ruling has come under scrutiny, but it remains in place as of the submission of this article.

B. The IRS's 2025 Announcement: Intent to Withdraw Basis Shifting Regulations, Offers Interim Relief

In a notable policy reversal, the IRS issued Notice 2025-23 on April 17, 2025, announcing that it would withdraw the final regulations on basis shifting (T.D. 10028), rescind the prior notice on such transactions, and waive certain penalties. These regulations had identified certain related-party basis transactions among partnerships and substantially similar transactions as "transactions of interest," thereby triggering disclosure obligations. As part of this withdrawal, the notice provides immediate relief by waiving penalties under Code Sec. 6707(a) for failure to file Form 8886 (*Reportable Transaction Disclosure Statement*) or Form 8918 (*Material Advisor Disclosure Statement*), as well as penalties under Code Sec. 6708 for failing to maintain the list required under Code Sec. 6112.

A few months later, Senator Wyden proposed legislation targeting basis shifting, while a group of House Republicans called for the withdrawal of the ruling.

C. Legislative Response: Wyden Targets Basis Shifting Loopholes

Not to be undone, on June 17, 2025, Senate Finance Committee Ranking Member Ron Wyden, D-Ore., introduced bills seeking to close loopholes, including basis shifting among partnerships.[26] Senator Wyden stated: "The tax rules around passthrough entities and partnerships are unbelievably complicated, and that's what makes them the preferred tax avoidance strategy of highly profitable corporations and the rich. A middle class worker can't slash their income tax rate by moving a big pile of cash from their living room to their garage, but that's essentially what corporations and wealthy investors are able to do when they shift assets through tangled webs of partnerships." We will see if it garners any support in Congress.

D. Congressional Letter Demands Withdrawal of Basis Shifting Revenue Ruling

Members of Congress have expressed concern about the Basis Shifting Revenue Ruling and have called for its

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withdrawal. In a July 23, 2025 letter to the former IRS Commissioner, 20 House Republicans expressed concerns that the ruling inappropriately applied the CESD by failing to conduct the threshold relevancy analysis described above. And without this "foundational analysis," the ruling sets aside partnership tax laws and basis adjustments required by law. The letter further asserts that it assumes that the transactions between related parties lack a legitimate business purpose. The letter explains that related party transactions are quite common and are governed by provisions like those in Code Sec. 482. In short, according to members of Congress, the ruling ignores business realities and withdrawing it would restore clarity for taxpayers.

This congressional pushback may reflect a broader trend toward favoring stricter textual interpretation of the Code, potentially placing greater pressure on the continued application of broad anti-abuse doctrines.

V. Tax Textualism on the Rise: Challenges to Anti-Abuse Enforcement

I would be remiss to not discuss the potential impact of textualism on and what some have dubbed the "triumph of tax textualism."[27] According to the Congressional Research Service,[28] textualism rests on several foundational principles:

- *Statutory Text*: Textualists emphasize text over any unstated purpose. They look for the meaning that a reasonable person would gather from the text of the law.
- *Statutory Purpose*: Textualists focus on statutory purpose only to the extent it is evident from the text.
- *Semantic Context*: Textualists look for evidence about the way a reasonable person would have used the words. In doing so, textualists might rely on rules of grammar or certain canons of constructions that reflect how language was used when the statute was enacted.
- *Legislative Supremacy*: Textualists are generally skeptical of using legislative history arguing that it may not reflect the intent of the legislature as a whole. Instead, they contend that the enacted text is the most authoritative indicator of legislative intent.

With this framework in mind, textualist challenges to IRS enforcement actions targeting basis shifting become more foreseeable. The Supreme Court has made clear that statutory interpretation begins with the statutory text and concludes there if the text is unambiguous.[29] And we know that a "permissible" interpretation of a statute no longer prevails simply because an agency offers it to resolve a perceived ambiguity.[30] Indeed, "statutes, no matter how impenetrable, do—in fact, must—have a single, best meaning. That is the whole point of having written statutes; 'every statute's meaning is fixed at the time of enactment.'"[31]

The question, then, is whether the IRS can still rely on the economic substance doctrine to override the literal operation of Subchapter K, in a post-*Loper Bright*, textualist-driven judicial environment. Consider this scenario: a taxpayer follows Subchapter K rules to shift basis among related parties; IRS denies benefit under Code Sec. 7701(o); the taxpayer argues: "There's no ambiguity. The statute allows it. IRS can't override that with a subjective anti-abuse theory." And that is exactly what members of Congress are stating as well.

And this is not new. Granted, we have seen this in different contexts in the application of substance over form and the intent of Congress in cases like *Summa Holdings* and *Mazzei*.[32] These cases reflect a deeper jurisprudential undercurrent: courts are increasingly willing to enforce statutory text as written, even where it may allow results the IRS views as abusive.

So, will the judicial shift toward textualism and away from agency deference undermine IRS efforts to combat tax abuse through broad anti-abuse doctrines like economic substance? While the IRS asserts that its position in Rev. Rul. 2024-14 is firmly grounded in statutory law and relies on the CESD in Code Sec. 7701(o), critics may argue that this does not eliminate the underlying tension. Even codified, Code Sec. 7701(o) remains a general anti-abuse provision whose application is highly contextual and subjective. In a judicial environment increasingly dominated by textualist methodology and skeptical of administrative overreach post-*Loper Bright*, courts may demand more than a general invocation of Code Sec. 7701(o) to override the literal operation of Subchapter K.

VI. Turning Uncertainty into Opportunity: Best Practices for Taxpayers and Advisors

The evolving interplay between basis shifting among related partnerships and the codified economic substance doctrine continues to generate significant uncertainty for taxpayers. This uncertainty is compounded by Notice 2025-23, which offers limited relief while leaving Rev. Rul. 2024-14 in place. A key unresolved issue is whether a threshold determination is required to assess the relevance of the codified doctrine in the first instance. At the same time, as IRS guidance and regulations face increasing judicial scrutiny, the agency may

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be more likely to rely on the economic substance doctrine as a fallback. The codified version, with its conjunctive test and strict liability penalty, offers the IRS a potent enforcement tool. And as courts evaluate both objective and subjective prongs, the potential costs and complexity of litigating economic substance issues remain high.

But among this uncertainty and evolving landscape, taxpayers and advisors have an opportunity to proactively strengthen their positions. Foremost, it is critical to contemporaneously document the nontax business realities underlying any transaction. Advisors should ensure that business purposes are well developed at the time of execution, rather than constructed after the fact, which is a common and costly misstep. Frequently, only the tax rationale is substantiated through emails, presentations, and internal analysis, leaving a record vulnerable to IRS scrutiny. In such cases, the Service may contend that the transaction fails to satisfy one or both prongs of the economic substance doctrine. The Basis Shifting Revenue Ruling illustrates how readily the IRS may disregard unsupported or minimal business purposes. To mitigate risk, taxpayers should consult qualified tax counsel and business advisors early in the planning process to ensure that transactional documentation reflects a comprehensive and economically grounded rationale, not merely a tax-driven objective.

It bears repeating: in tax law, form over substance remains the exception, not the rule.

Tax Court Update

On November 12, 2025, after this article was submitted, the Tax Court issued a reviewed opinion in *S.S. Patel*, 165 T.C. 10, Dec. 62740. The court held that application of the CESD requires a relevancy determination under Code Sec. 7701(o), found that the section was relevant to petitioners' transactions, and concluded that petitioners were liable for CESD penalties at the increased 40% rate for the relevant tax years at issue.

ENDNOTES

* The firm specializes in civil and criminal tax matters. Prior to joining the firm, Mr. Voth served 15 years at the IRS Office of Chief Counsel, including six years as a Special Trial Attorney. In that role, he handled some of the IRS's most complex litigation matters.

1 Statutory references are to the Internal Revenue Code (IRC), Title 26 USC.

2 *Southgate Master Fund, L.L.C. ex rel. Montgomery Cap. Advisors, LLC*, CA-5, 2011-2 USTC ¶50,648, 659 F3d 466, 478-79.

3 SCt, 35-1 USTC ¶9043, 293 US 465, 55 SCt 266.

4 *Gregory v. Helvering*, SCt, 35-1 USTC ¶9043, 293 US 465, 55 SCt 266.

5 *Id.* at 469.

6 *ACM Partnership*, 73 TCM 2189, Dec. 51,922(M), TC Memo. 1997-115, at *36, *aff'd in part, rev'd in part*, CA-3, 98-2 USTC ¶50,790, 157 F3d 231, *cert. denied*, SCt, 526 US 1017 (1999) citing *L.B. Yosha*, CA-7, 88-2 USTC ¶9589, 861 F2d 494, 498-499, *aff'g, B.S. Glass,* 87 TC 1087, Dec. 43,495 (1986).

7 *ACM Partnership*, 73 TCM 2189, Dec. 51,922(M), TC Memo. 1997-115, at *39.

8 *Id.*

9 *Id.*

10 H.R. Rep. 111-443, at 297-298 (2010), P.L. 111-152, Health Care and Education.

11 *E.g., N.L. Slone*, CA-9, 2015-2 USTC ¶50,457, 810 F3d 599, 605; *Klamath Strategic Inv. Fund*, CA-5, 2009-1 USTC ¶50,395, 568 F3d 537, 544.

12 *E.g., Rice's Toyota World*, CA-4, 85-1 USTC ¶9123, 752 F2d 89, 91–92.

13 *E.g., J.S. James*, CA-10, 90-1 USTC ¶50,185, 899 F2d 905, 908.

14 H.R. Rep. 111-443, at 303-304; Code Sec. 6662(b)(6).

15 *Id.* at 304.

16 *Id.* at 303.

17 *Liberty Global, Inc.*, DC-CO, 2022-1 USTC ¶50,134, 2023 WL 8062792 (2023).

18 *Id.*

19 Docket No. 24344-17 *et al.*

20 Dec. 62,439(M), TC Memo. 2024-34.

21 *K.F. Knetsch*, SCt, 60-2 USTC ¶9785, 364 US 361, 367-69, 81 SCt 132; *Coltec Indus., Inc.*, CA-FC, 2006-2 USTC ¶50,389, 454 F3d 1340, 1354; *Gregory*, SCt, 35-1 USTC ¶9043, 293 US 465, 469-470, 55 SCt 266.

22 *See Coltec*, CA-FC, 2006-2 USTC ¶50,389, 454 F3d 1340, 1360; *see also J.P. Reddam*, CA-9, 2014-1 USTC ¶50,322, 755 F3d 1051, 1060–62.

23 *See K.F. Knetsch*, SCt, 60-2 USTC ¶9785, 364 US 361, 366, 81 SCt 132 (quoting *B.D. Gilbert*, CA-2, 57-2 USTC ¶9929, 248 F2d 399, 411 (Hand, J., dissenting)).

24 *J.P. Reddam*, CA-9, 2014-1 USTC ¶50,322, 755 F3d 1051, 1061–62.

25 *CNT Investors, LLC*, 144 TC 161, 193, Dec. 60,263 (2015).

26 *See* press release, *Wyden Unveils Bills Closing Loopholes Allowing Wealthy Investors and MegaCorporations to Abuse Partnerships to Dodge Taxes* (June 17, 2025) (introducing the PARTNERSHIPS Act and the Basis Shifting Is a Ripoff Act).

27 R. Avi-Yonah, *The Triumph of Tax Textualism*, Tax Notes posted on Oct. 9, 2024, available at: *www.taxnotes.com/tax-notes-today-federal/litigation-and-appeals/triumph-tax-textualism/2024/10/09/7lxfk?highlight=Triumph%20tax%20textualism*.

28 CRS Report R45153, "Statutory Interpretation: Theories, Tools, and Trends" (last updated Mar. 10, 2023), available at: *crsreports.congress.gov/product/pdf/r/r45153*.

29 *BedRoc Ltd., LLC*, SCt, 541 US 176, 183, 124 SCt 1587 (2004).

30 *Varian Medical Systems Inc.*, 163 TC No. 4, Dec. 62,497, 163 TC No. 76, 105 (2024) (citing *Loper Bright Enterprises v. Raimondo*, SCt, 603 US 369, 144 SCt 2244 (2024).

31 *Id.*

32 *Summa Holdings*, CA-6, 2017-1 USTC ¶50,155, 848 F3d 779 ("Congress designed DISCs [domestic international sales corporation] to enable exporters to defer corporate income tax and "[b]y congressional design, DISCs are all form and no substance." *C. Mazzei*, 150 TC 7, Dec. 61,130, 150 TC 138 (2018), *rev'd*, CA-9, 2021-1 USTC ¶50,162, 998 F3d 1041 ("[W]hen Congress expressly departs from substance-over-form principles, the Commissioner may not invoke those principles in a way that would directly reverse that congressional judgment.").

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