FILED
United States Court of Appeals
Tenth Circuit

August 17, 2026

Christopher M. Wolpert
Clerk of Court

PUBLISH

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

LIBERTY GLOBAL, INC.,

Plaintiff - Appellant,

v.

UNITED STATES OF AMERICA,

Defendant - Appellee.

THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, et al.,

Amici Curiae.

No. 23-1410
(D.C. No. 1:20-CV-03501-RBJ)
(D. Colo.)

ORDER

Before **HOLMES**, Chief Judge, **HARTZ**, **TYMKOVICH**, **MATHESON**, **BACHARACH**, **PHILLIPS**, **McHUGH**, **MORITZ**, **EID**, **CARSON**, **ROSSMAN**, and **FEDERICO**, Circuit Judges.

This matter is before the court on *Plaintiff-Appellant Liberty Global Inc.'s Petition for Panel Rehearing or Rehearing En Banc* and Appellee's *Response to Petition for Rehearing.* Upon careful consideration of the petition and the response, we direct as follows.

The pending motions for leave to file amicus briefs are GRANTED. All amicus briefs submitted in connection with the court's consideration of whether to grant en banc rehearing will be filed as of the date they were submitted.

Appellant's request for panel rehearing is DENIED.

The petition and response were transmitted to all judges of the court who are in regular active service, and a poll was called. The poll did not carry. Consequently, Appellant's request for en banc rehearing is DENIED.

Judges Hartz, Tymkovich, and Eid voted to grant en banc rehearing. Judge Eid has filed a separate dissent from the denial of en banc rehearing, which is joined by Judges Hartz and Tymkovich.

Entered for the Court,

Per Curiam

EID, Circuit Judge, dissenting from denial of petition for rehearing en banc.

Liberty Global, Inc. is a U.S. telecommunications corporation that sought to exploit a tax loophole created by the 2017 Tax Cuts and Jobs Act ("TCJA"), Pub. L. No. 115-97, 131 Stat. 2054 (codified as amended in scattered sections of I.R.C.). Through a series of steps titled "Project Soy," Liberty Global and its foreign affiliates repatriated foreign-corporate income by changing its corporate form, capital structure, and selling one of its subsidiaries before the last day of the tax year to generate a deduction under I.R.C. § 245A. The district court held that Liberty Global is not entitled to this deduction under the "economic substance doctrine," as codified in I.R.C. § 7701(o), and the panel majority agreed.

While this may seem like a complicated question about tax law, this case instead presents an important and straightforward question of statutory interpretation regarding how and when to apply the codified economic substance doctrine, defined as "the common law doctrine under which tax benefits . . . with respect to a transaction are not allowable if the transaction does not have economic substance or lacks a business purpose." I.R.C. § 7701(o)(5)(A). Section 7701(o) clearly states that the economic substance doctrine applies "[i]n the case of any transaction to which the economic substance doctrine is relevant" and further explains that "[t]he determination of whether the economic substance doctrine is relevant to a transaction shall be made in the same manner as if this subsection had never been enacted." *Id.* § 7701(o)(1), (o)(5)(C). This case turns on how we interpret the meaning of "relevant" in § 7701(o).

I believe the panel majority's holding that the economic substance doctrine is relevant when taxpayers attempt "to obtain a benefit not intended by Congress" gives too much deference to courts and the government to provide necessary clarity to taxpayers. *Liberty Global, Inc. v. United States*, 174 F.4th 1208, 1218 (10th Cir. 2026). As I explained in dissent, I would interpret § 7701(o) to require a meaningful threshold relevancy determination, and I would make this determination by examining how courts have applied the economic substance doctrine under the common law. *See id*. at 1226–32 (Eid, J., dissenting). This would be in line with the recent Tax Court holding in *Patel v. Commissioner*, 165 T.C. 171 (2025), where the court concluded that § 7701(o) "requires a relevancy determination" which "is not coextensive with the two-part test set forth in § 7701(o)(1)(A) and (B)." *Id*. at 188; *see also id*. at 189–92 (determining the relevance of the economic substance doctrine to the provision at issue by examining how previous courts applied this doctrine).

Accordingly, I respectfully dissent from the court's order denying en banc review.