

Current Status of Issue

Temporary Regulations were issued on July 15, 2008 effective for foreign taxes paid or accrued during tax years ending on or after July 16, 2008.

The IMT is considering cases to designate for litigation.

Exchange of information between JITSIC countries is being utilized.

Issue Management Team (IMT)

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Tier I Foreign Tax Credit Generators

Quick Reference Guide

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**Issue Owner Executive
(IOE)**

Walter Harris, Director

Financial Services

Issue Management Team (IMT)

Because of the significant impact these transactions have on our ability to properly administer the FTC regime, as well as the resources required to work the issue, any teams with this issue should contact either FTC Generator Technical Advisor as soon as they identify indicators of the issue. Teams should anticipate having regular communications with the IMT from the initial identification and throughout the development of the case. All Notices of Proposed Adjustments ("NOPAs") are required to be shared with the IMT (through Financial Services DFO-Manhattan) for purposes of obtaining IMT's approval. There is a clear expectation that certain key members of the IMT will work closely with the field team and local LB&I Counsel to enhance and facilitate the NOPA review and finalization process. The IMT's approval must be received prior to the issuance of the NOPA to the taxpayer.



Tier 1

Tier I: Foreign Tax Credit (FTC) Generators

Issue Description

Foreign Tax Credit Generator transactions cross all industries, but are most common in the Financial Services Industry. FTC Generators are highly structured transactions that undermine the intent of the FTC regime. In general, US taxpayers use these transactions to eliminate US tax by generating a foreign tax that improperly results in a credit to the US taxpayer. FTCs are generated in circumstances in which the underlying business transaction would not ordinarily be subject to foreign tax. The transactions purport to be in technical compliance with the law, but are not consistent with the underlying intent of the statutes. Two types of transactions, Asset Parking transactions and Lender/Borrower transactions, have been identified.

Asset Parking Transactions – These transactions involve the movement of assets that generate a passive income stream such as interest or dividends into a structure that subjects them to foreign tax.

Lender/Borrower Transactions – These transactions result in the duplication of tax benefits through the use of structured transactions designed to exploit inconsistencies between U.S. and foreign tax laws (financing transactions). Coupon stripping transactions, a subset of borrower transactions, have also been identified.

Administrative Codes

UIL Codes:

* Foreign Tax Credit Generating Transactions - **901.13-00**

SAIN - **604-01**

Secondary SAIN - **123**

Tracking/Project Code - **0573**

ITA Code - **F123**

Mandatory IDRs

The IMT has developed language to be inserted into an initial IDR that is mandatory for all cases with at least \$5 million of foreign taxes paid or accrued (or deemed paid) and reported on line 5, Part II, of Schedule B of Form 1118.

FTC Generator Mandatory IDR:

<http://www.irs.gov/businesses/article/0,,id=204528,00.html>

The IMT has also developed language to use in a follow up IDR which should be issued if the taxpayer's response to the mandatory IDR indicates that the taxpayer has participated in any transaction that satisfies the conditions in the regulations.

FTC Generator Follow –up IDR:

<http://www.irs.gov/businesses/article/0,,id=204527,00.html>

Penalties

Penalties must be considered in accordance with the general LB&I guidance with respect to the consideration, development and assertion of penalties. The IMT fully supports this position and will advise all teams to be sure to include comprehensive coverage for this element. The IMT will also support and assist teams in this aspect of issue development as well.

Appeals Settlement Guidelines (ASGs)

Appeals has begun the process of developing Appeals Settlement Guidelines.

On 6/6/06, the issue was designated an Appeals Coordinated Issue. See the designation at: http://www.irs.gov/pub/irs-utl/ftc-ts_memo_06_26_attachment_a.pdf

Issue Specialization Team

No IST has been formed for this issue.

Administrative & Technical Guidance

Regulations

Final and Temporary Regulations were issued on July 16, 2008 that address the determination of the amount of foreign taxes paid for purposes of IRC Section 901.

[Final & Temporary Regulations](#)

Chief Counsel Advice (CCA)

A CCA applicable to an Asset Parking “STARS” transaction was issued to the taxpayer in February 2008 and made public on June 5, 2008.

[CCA 200826036](#)

Technical Advice Memorandum (“TAM”)

A TAM on a US Lender transaction was issued in November of 2007 and made public on February 19, 2008.

[TAM 200807015](#)

Industry Director Directives (IDDs)

Industry Director Directive #1 issued March 11, 20A revised Industry Director Directive #1 was issued on February 19, 2009.

<http://www.irs.gov/businesses//0,,id=204526,00.html>

Executing IMT Strategy for Tier I Issues

Audit Teams Should:

- ☐ Establish the Tier I Issue on IMS using the UIL code per the ID Directive.
- ☐ Research the issue on the Tier I website.
- ☐ Communicate with the IMT early to determine the strategy and any special requirements for the issue.
- ☐ Consider the issue in the audit planning and risk assessment in accordance with the IMT strategy.
- ☐ Utilize the audit tools and techniques provided by the IMT to develop the issue.
- ☐ Resolve the issue using appropriate tools in alignment with the IMT strategy and in consultation with the IMT.