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From:**Sent:** Wednesday, February 20, 2013 9:18:50 AM**To:****Cc:****Subject:** Informal Advice Request

This email follows up on our phone discussion regarding the application of judicial doctrines to foreign tax credits. We expressed the view of the Internal Revenue Service that judicial doctrines, including the economic substance doctrine, can be used to challenge a foreign tax credit claim that otherwise meets the technical requirements of the Internal Revenue Code and relevant regulations. See *Compaq Computer Corp. & Subsidiaries v. Comm'r*, 113 T.C. 214, 225 (1999) (the statutory regime does not completely express Congress's intent regarding allowable foreign tax credits and the economic substance doctrine applies to such credits; Congress did not intend to permit a transaction "which is a mere manipulation of the foreign tax credit to achieve U.S. tax savings."), *rev'd on other grounds*, 277 F.3d 778 (5th Cir. 2001); *Pritired 1, LLC v. United States*, 816 F. Supp. 2d 693 (S.D. La. 2012) (disallowing foreign tax credits claimed in connection with Pritired transaction because, in part, the transaction lacked economic substance); *Bank of New York Mellon Corp. v. Comm'r*, No. 26683-09 (T.C. filed Feb. 11, 2013) (disallowing foreign tax credits claimed in connection with a transaction that lacked economic substance); H.R. REP. NO. 111-443, vol. I, at 296 (2010) ("[T]he fact that a transaction does meet the requirements for specific treatment under any provision of the Code is not determinative of whether a transaction or series of transactions of which it is a part has economic substance."). See also Rev. Rul. 2000-12, 2000-1 C.B. 744 (disallowing loss in connection with reset note transaction because the loss lacked economic substance). The transaction that produced the disputed tax benefit is subject to scrutiny for economic substance, even if it is part of a larger set of transactions. See *Nicole Rose Corp. v. Comm'r*, 320 F.3d at 284; *Klamath Strategic Inv. Fund v. U.S.*, 568 F.3d 537, 545 (5th Cir. 2009); *Coltec Indus., Inc. v. United States*, 454 F.3d 1340, 1352-55 (Fed. Cir. 2006); *Black & Decker Corp. v. United States*, 436 F.3d 431, 436 (4th Cir. 2006); *ACM P'ship v. Comm'r*, 157 F.3d 231, 248 (3d Cir. 1998); *Bank of New York Mellon Corp. v. Comm'r*, No. 26683-09, slip op. at 30, (T.C. filed Feb. 11, 2013); *Long Term Capital Holdings v. United States*, 330 F. Supp. 2d 122, 183 (D. Conn. 2004), *aff'd*, 150 Fed. Appx. 40 (2d Cir. 2005). Accordingly, economic substance principles properly apply to determine the substance of the transaction involving the reset notes that gave rise to the disputed foreign tax credits in the case you're considering.

Please don't hesitate to call if you have further questions.