

## Current Status of Issue

Final regulations are in process, but are not yet issued.

The IMT is considering cases to designate for litigation.

Exchange of information between JITSIC countries is being utilized.

The IMT is exploring the possibility of additional published guidance to address this issue.

LMSB PFTG Technical Advisor, FTC Generators, Position has been filled. See IMT Points of Contact listing.

## 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 LMSB 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.

## Issue Management Team (IMT)

**Issue Owner Executive** - Walter Harris

**LMSB Counsel Executive**— Roland Barral

**LMSB Financial Services, DFO**—Kathy Robbins  
**Appeals Officer, International Specialist**—William F. Duffy

**LMSB Office of Chief Counsel**—Michael Gilman

**LMSB Office of Chief Counsel**—Marvis Knospe

**LMSB International, JITSIC**—Tamara W. Ashford

**LMSB Financial Services, Senior Program Specialist**—Michelle Levitte

**LMSB Financial Services, Manager**—Mark Skepner

**LMSB Issue Counsel:**

**OCC, LMSB**—Anne O. Hintermeister

**OCC, LMSB**—Sashka Koleva

**OCC, LMSB**—Anna Kozoulina

**Contacts:**

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**LMSB PFTG, Technical Advisor**—Mark English;  
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# Tier 1



# Tier I

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## Foreign Tax Credit Generators

### Quick Reference Guide

April, 2008

**Issue Owner Executive  
(IOE)**

**Walter Harris, Director**

**Financial Services**

## 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 created draft language, with instructions, that can be used as an initial IDR to find FTC generators or modified to obtain additional information if an IDR has already been issued. Due to the difficulty in identifying these issues, the IMT strongly recommends that the IDR be issued on all cases claiming significant FTCs, cases where there is an unusual spike in the amount of FTC utilized, or cases involving a deconsolidation of a subsidiary which results in the utilization of significant FTCs. The FTC Generator Technical Advisors are available to help with this IDR as well as to provide assistance and support for understanding the specific factual pattern of your case.

#### FTC Generator Draft IDR & Instructions:

<http://www.irs.gov/businesses/article/0,,id=180277,00.html>

### Penalties

Penalties must be considered in accordance with the general LMSB 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)

Currently there are no ASGs for this issue.

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](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

Proposed Regulations (Reg. 156779-06) that address the determination of the amount of taxes paid for purposes of IRC Section 901 have been issued. They can be viewed on the web at: [http://www.irs.gov/irb/2007-17\\_IRB/ar15.html](http://www.irs.gov/irb/2007-17_IRB/ar15.html)

See also IR 2007-73, issued March 29, 2007 which announces the proposed regulations. The related web address is: <http://www.irs.gov/newsroom/article/0,,id=169165,00.html>.

### Industry Director Directives (IDDs)

Industry Director Directive #1 issued March 11, 2008. <http://www.irs.gov/businesses//0,,id=180276,00.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.