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n el artículo IRS Watch: *Keeping an Eye on Developments at the IRS, Including Updated Guidance on Economic Substance Doctrine and Penalty, Taxpayer Advocate Service Changes to Case Acceptance Criteria, and Appeals Updates (Non-Docketed Case Processing Times, Guidelines for Docketed Cases, and Policy on Third-Party Contacts),* escrito por Keenan, John; Cooper, Matt; Abney, Teresa, publicado por *Journal of Tax Practice & Procedure*; Riverwoods Tomo 24, N.º 2, (Summer 2022): 15-16,40se lee: “*Under the economic substance doctrine, taxpayers cannot claim tax benefits for a transaction that lacks economic substance. Although the doctrine originated as a judicial doctrine, Congress codified it in 2010. Under Code Sec. 7701(o), a transaction has economic substance only if: (1) the transaction changes in a meaningful way (apart from Federal income tax) the taxpayer's economic position and (2) the taxpayer has a substantial purpose (aside from Federal income tax effects) for entering such a transaction. There is also a 20 or 40 percent strict liability accuracy-related penalty for transactions lacking economic substance.1 ―Shortly after the codification the economic substance doctrine, the IRS Large Business & International (LB&I) Division mandated that its examiners obtain executive approval before raising the economic substance doctrine and asserting the economic substance penalty.2 LB&I also provided a detailed, four-step process that examiners had to follow to obtain the necessary approval.3 The IRS Small Business/Self-Employed (SB/SE) Division also incorporated the mandatory executive approval in order to assert the economic substance penalty, and the procedures for both LB&I and SB/SE were incorporated into various parts of the Internal Revenue Manual. Taxpayers and practitioners welcomed these internal procedures because it would limit the misapplication of a complicated doctrine and the related strict liability penalty that does not have a reasonable cause exception. ―On April 22, 2022, the IRS issued a memorandum to LB&I and SB/SE examination employees stating that they no longer needed executive approval to raise the economic substance doctrine or to assert the economic substance penalty.4 The memorandum does not explain why the IRS is changing its policy for raising the doctrine; with respect to the penalty, the memorandum says the changes "align this penalty with other assessable penalties which do not require executive approval." The memorandum does not remove the requirement that the penalties must be timely approved in writing by the immediate supervisor of the person who initially determines the penalty under Code Sec. 6751(b). Additionally, IRS Area Counsel still must review any statutory notice of deficiency asserting the economic substance doctrine or the economic substance penalty.*” Resaltamos la frase “*Los contribuyentes y los profesionales dieron la bienvenida a estos procedimientos internos porque limitarían la aplicación incorrecta de una doctrina complicada y la sanción de responsabilidad objetiva relacionada que no tiene una excepción de causa razonable*.” Exactamente así reaccionamos en Colombia y también aquí nos preocupamos cuando tenemos que aceptar el criterio de un funcionario, porque no hay confianza en ellos.

*Hernando Bermúdez Gómez*