

News Release

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US Supreme Court Holds UK Windfall Tax Is Creditable Foreign Tax

In a unanimous 9-0 decision in *PPL Corp. v. Commissioner*, the US Supreme Court held that the UK Windfall Tax is a creditable foreign tax, thus reversing the Third Circuit Court of Appeals' contrary decision and reinstating the Tax Court's holding below. In doing so, the Supreme Court gave a strong nod to the US Tax Court's analysis of the issues and the evidence and expert testimony presented by PPL at the trial level. The Supreme Court went out of its way to announce its holding as "[c]onsistent with precedent and the Tax Court's analysis below." Endorsing PPL's consistent position throughout the proceedings, and rejecting the IRS' contrary position, the Supreme Court stated that "[i]nstead of the foreign government's characterization of the tax, the crucial inquiry is the tax's economic effect."

The Supreme Court's decision in *PPL* is the only federal income tax case to be decided this term, and it is one of the few cases involving a substantive, non-procedural tax issue in the past few decades. The decision resolves a split between the Third Circuit and the Fifth Circuit, which likewise had followed the Tax Court's analysis in *PPL*.

The decision is the first time that the Supreme Court has reviewed the IRS' foreign tax credit regulations and their "predominant character" standard. By settling the case on the basis of "substance over form," the Supreme Court rejected the IRS' attempt to selectively use that well-established federal tax law principle. The Supreme Court's holding has broad ramifications not only for international taxation but also for other areas of the tax law.

Hunton & Williams' tax controversy team of **Richard May**, **Tim Jacobs** and **Mark Bierbower** tried the *PPL* case before the Tax Court which resulted in a favorable precedential opinion. The Hunton & Williams team also successfully tried a second issue, involving the depreciation of street lights, with broad national effect for the utility industry. That issue was not appealed. The Supreme Court team was led by former Solicitor General Paul Clement of Bancroft PLLC, and included the Hunton & Williams' tax controversy team, Erin Murphy of Bancroft, and Ashley Parrish of King & Spalding LLP.

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Contacts

Richard E. May
rmay@hunton.com

Timothy L. Jacobs
tjacobs@hunton.com

Mark B. Bierbower
mbierbower@hunton.com