Tax Law—U.K. Windfall Tax Constitutes U.S. Income Tax Under I.R.C. § 901(b)(1)—*PPL Corp. v. Commissioner*, 133 S. Ct. 1897 (2013)

The U.S. tax code allows citizens and domestic corporations to credit foreign taxes paid against U.S. taxes owed.[1] A foreign tax paid by a U.S. citizen or a domestic corporation may be creditable against domestic taxes when such tax is considered a levy on income.[2] Although the tax's "predominant character" controls in determining whether it is an income tax, the effect of a foreign country's characterization of the tax on such analysis has remained unsettled.[3] In *PPL Corp. v. Commissioner*,[4] the Supreme Court considered whether a windfall tax paid in the United Kingdom (U.K.), and characterized by the U.K. as a tax on value and not a tax on income, is creditable in the United States.[5] The Court held that the tax formula adopted by the U.K. Labour Party was an income tax in the United States for credit purposes because the economic reality of the levy was a tax on the company's income.[6]

A Conservative Party-controlled British Parliament privatized certain government-owned companies in the 1980s and 1990s through an initial sale to the public known as a "flotation."[7] Petitioner PPL Corporation (PPL) was a U.S. company that owned twenty-five percent of one of the privatized companies, South Western Electricity plc (SWE).[8] For the four years after privatization, the British government required certain companies, including SWE, to charge customers the same rates they had charged under the government's control.[9] The companies became much more efficient during this period and earned large profits.[10]

In 1997, the Labour Party imposed a tax on those companies previously prohibited from raising their rates by hiring an accounting firm, Arthur Andersen, to structure a levy that would tax, at twenty-three percent, the windfall profits that the companies earned during the years in which they

1. *See* I.R.C. § 27(a) (2012).
2. *See* I.R.C. § 901(b)(1) (2012).
3. *See* Philip R. West, *Foreign Law in U.S. International Taxation: The Search for Standards*, 3 FLA. TAX REV. 147, 148 (1996) (highlighting lack of clarity of foreign law's effect on U.S. taxes); *see also* Treas. Reg. § 1.901-2(a)(3) (as amended in 2013) (setting forth "predominant character" test); Biddle v. Comm'r, 302 U.S. 573, 578-79 (1938) (originating legal standard later codified at section 1.901-2 of Treasury Regulations).
4. 133 S. Ct. 1897 (2013).
5. *See id.* at 1899, 1903.
6. *See id.* at 1905 (characterizing British excess profits tax as income tax under U.S. law).
7. *See id.* at 1900.
8. 133 S. Ct. at 1901.
9. *Id.* at 1900.
10. *Id.*

charged the required fixed rate.[11] In 1997, PPL claimed a U.S. tax credit under I.R.C. § 27(a) for the amount it paid under the windfall tax as a shareholder in SWE.[12] The Commissioner of Internal Revenue rejected PPL's credit claim, but the Tax Court found that the windfall tax was creditable.[13] On appeal, the United States Court of Appeals for the Third Circuit held that the tax was not creditable.[14]

Congress created the foreign tax credit (FTC)—defined in I.R.C. § 901 and allowed pursuant to I.R.C. § 27(a)—under the Revenue Act of 1918 "to mitigate the evil of double taxation."[15] Congress also intended the FTC to encourage foreign investment by Americans.[16] Under I.R.C. § 901(b)(1), a U.S. corporation may credit, dollar-for-dollar to their U.S. taxes, "the amount of any income . . . and excess profits taxes paid or accrued . . . to any foreign country."[17] Despite the statute's succinct language, the rules and interpretations involving FTCs have become fairly complicated and intricate over the past century.[18] The term "income" as used in I.R.C. § 901(b)(1) became a particular point of confusion for many courts.[19]

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11. *Id.* at 1900-01. The formula for the tax is 23% x [(365 x (P/D) x 9) - FV], where D is the number of days that the company was subject to the rate regulation (the "initial period"), P represents total profits earned during the initial period, FV is the flotation value or market capitalization value after sale, and 9 is the price-to-earnings ratio. *Id.* D only varied for a few of the companies. *Id.* The only variables that changed in the tax formula from company to company were the profits and the flotation values. *Id.*

12. 133 S. Ct. at 1901.

13. *Id.*

14. *Id.* Specifically, the Third Circuit reversed the Tax Court's disposition. *Id.*

15. Burnet v. Chi. Portrait Co., 285 U.S. 1, 7 (1932) (explaining conflicting opinions on status of windfall tax for U.S. taxation purposes); *see* Comm'r v. Am. Metal Co., 221 F.2d 134, 137 (2d Cir. 1955) (discussing whether tax fits within FTC determination in light of policy against double taxation); Bank of Am. Nat'l Trust & Sav. Ass'n v. United States, 459 F.2d 513, 519 (Ct. Cl. 1972) (reasoning FTC intended to avoid double taxation); Phillips Petrol. Co. v. Comm'r, 104 T.C. 256, 283 (1995) (discussing legislative history of I.R.C. § 901); William D. Elliott, *Federal Taxation*, 45 TEX. TECH L. REV. 811, 819 (2013) (describing double taxation as "foundational principle" of § 901 FTC). Foreign taxes paid other than those described in § 901, such as value-added, excise, property, and payroll taxes, may be deductible, but not credited, against U.S. taxes. *See* Elliott, *supra,* at 819.

16. *See* Comm'r v. Am. Metal Co., 221 F.2d 134, 137 (2d Cir. 1955) (reasoning second purpose of FTC aimed at encouraging foreign trade by Americans); *see also* H.R. REP. NO. 65-767, at 11 (1918) (indicating FTC intended to alleviate burden of double taxation). *But see* Julie Roin, *Competition and Evasion: Another Perspective on International Tax Competition*, 89 GEO. L.J. 543, 586 (2001) ("Congress adopted the credit in an attempt to remove tax considerations as an element of business location decisions.").

17. I.R.C. § 901(b)(1) (2012); *see* PHILIP F. POSTLEWAITE, ET AL., FEDERAL INCOME TAXATION OF INTELLECTUAL PROPERTIES AND INTANGIBLE ASSETS ¶ 14.06[1] (Supp. 2013) (emphasizing credits typically more advantageous than deductions). There are two requirements that a U.S. taxpayer must fulfill in order to credit a foreign levy against their U.S. taxes: the levy must be a tax and it must be on income. *See* POSTLEWAITE, ET AL., *supra*, ¶ 14.06[3].

18. *See* Julie A. Roin, *The Grand Illusion: A Neutral System for the Taxation of International Transactions*, 75 VA. L. REV. 919, 920 (1989) (maintaining tax code reforms and changes complicated preexisting tax rules); *see also* Ann Duvall Alsobrook, *Improving the Competitiveness of U.S. Multinational Corporations Through Changes to the Foreign Tax Credit*, 12 AM. U. J. INT'L L. & POL'Y 875, 878 & n.13 (1997) (recognizing complexity of U.S. foreign tax law).

19. *See* Bank of Am. Nat'l Trust & Sav. Ass'n v. Comm'r, 61 T.C. 752, 759 (1974), *aff'd*, 538 F.2d 334

Part of the source of this confusion comes from the 1938 landmark Supreme Court case of *Biddle v. Commissioner*, in which the Court considered whether England's interpretation of a tax determined how the United States should interpret it for FTC purposes.[20] The Court provided the foundation for what would later be codified at section 1.901-1 of the Treasury Regulations by holding that U.S. tax law principles determine whether a tax is considered an income tax, and that a foreign country's interpretation of a tax is, at most, a factor among others that should be considered in the analysis.[21] Under section 1.901-1, when determining whether a foreign tax resembles a U.S. income tax, courts now analyze the foreign levy according to the predominant-character test, set forth in section 1.901-2 of the Treasury Regulations.[22] Under this test, and in line with the general principle of tax law, courts defer to the substance of a foreign levy over its form.[23] The predominant-character test is satisfied when a foreign tax is "likely to reach net gain in the normal circumstances in which it applies."[24]

With the goal of avoiding uncertainty for businesses, courts have not allowed a foreign country's interpretation of a tax to carry their analysis of whether such tax was creditable.[25] The Supreme Court expressed its sensitivity to the problem of uncertainty early on when it acknowledged in *Biddle* that "there is nothing in [the statute's] language to suggest that, in allowing the credit for foreign tax payments, a shifting standard was adopted by reference to

(9th Cir. 1976) (discussing range of meanings of "income" and "long and tortuous history" of defining it); *see also* Stanley S. Surrey, *Current Issues in the Taxation of Corporate Foreign Investment*, 56 COLUM. L. REV. 815, 819-20 (1956) (arguing courts and Internal Revenue Service have labored to define income).

20. *See* Biddle v. Comm'r, 302 U.S. 573, 575 (1938) (considering whether paid or accrued foreign taxes creditable toward U.S. taxes). In *Biddle*, British tax authorities required U.S. taxpayers who held stock in British corporations to report as income the amount of dividends received and their respective proportions of taxes paid by the corporations on its profits. *Id.* at 575. "Although the meaning of the term 'income tax' was not at issue in *Biddle*, the Court's comments have been the touchstone of the definitional inquiry ever since." 3 BORIS I. BITTKER & LAWRENCE LOKKEN, FEDERAL TAXATION OF INCOME, ESTATES AND GIFTS ¶ 72.4.1 n.2 (3d ed. 2005).

21. *See* Biddle v. Comm'r, 302 U.S. 573, 579 (1938) (setting forth standard to apply in deciding whether foreign tax constitutes income). The question is whether the tax is a "substantial equivalent" of payment of the tax as in the United States. *Id.*

22. *See* Treas. Reg. § 1.901-2(a)(1)(ii) (as amended in 2013) (establishing predominant-character test); Remy Farag, *U.S. Supreme Court Holds U.K. Windfall Tax Is Foreign Tax Creditable*, J. INT'L TAX'N, Aug. 2013, at 5, 5 (describing how predominant-character test applies).

23. Farag, *supra* note 22, at 6 (discussing long-standing tax principle of substance over form); *see also* Boulware v. United States, 552 U.S. 421, 422 (2008) (reasoning tax classifications turn on economic realities or economic substance and not necessarily form employed).

24. Treas. Reg. § 1.901-2(a)(3)(i); *see* Phillips Petrol. Co. v. Comm'r, 104 T.C. 256, 316 (1995) (holding Norwegian tax profits within meaning of Internal Revenue Code); *see also* Farag, *supra* note 22, at 5.

25. *See* Kate Kraus, Pasquantino*: Foreign Tax Evasion as a Domestic Crime*, CORP. TAX'N, Nov.-Dec. 2005, at 3, 8 (observing challenges and burdens for courts in applying foreign tax law); *see also* Biddle v. Comm'r, 302 U.S. 573, 578-79 (1938) (reasoning nothing in statute indicated FTC should base meaning on foreign statutes or decisions).

foreign characterizations and classifications of tax legislation."[26] Because courts "look first to the law of the foreign state in order to determine the nature of the obligations and rights which form the basis of the claim of a foreign tax credit," companies are required to be aware of both the foreign country's characterization of the tax and the United States' characterization of the tax, both of which may be unclear.[27] One challenge for businesses is that the "[f]ormalistic dependence of the [foreign tax] credit on legal liability can result in uncertainty because foreign law regarding legal liability is sometimes unclear."[28] Additionally, the uncertainty of foreign taxes can have a significant effect on foreign investment.[29]

In *PPL Corp. v. Commissioner*, the Supreme Court followed the long-standing tax principle of substance over form.[30] The Court reasoned that Treasury Regulation § 1.901-2 establishes the principles relevant to the issue of whether a foreign tax is creditable against U.S. taxes, and that the predominant-character test applied.[31] Under the predominant-character test, the Court first determined that the U.K.'s windfall-tax formula included net income as a variable because it took a company's profit into account.[32] The Court agreed with PPL and the Fifth Circuit, deciding that the profits and floatation values were not fixed, and the only way to calculate the profit-making value was to consider the actual profits of each company.[33] The Court concluded in the first step of its predominant-character analysis that the levy was a tax on realized net

26. Biddle v. Comm'r, 302 U.S. 573, 578-79 (1938); *see* Riggs Nat'l Corp. v. Comm'r, 163 F.3d 1363, 1368 (D.C. Cir. 1999) ("Inquiry into the U.S. tax consequences of foreign levies is what this area of tax law is all about, and is the premise of the Supreme Court's dictum in *Biddle v. Commissioner of Internal Revenue*.").

27. *See* Amoco Corp. v. Comm'r, 71 T.C.M. (CCH) 2613, 2629 (1996), *aff'd*, 138 F.3d 1139 (7th Cir. 1998); Frank M. Burke, Jr., *Taxation of International Petroleum Exploration and Production Activities*, 27 TULSA L.J. 525, 529 (1992) (discussing how understanding of complicated FTC rules greatly influences company's operations). *But see* Brian Robert Murphy, Case Comment, Goodyear Tire & Rubber Co. and Affiliates v. United States*, 856 F.2d 170 (Fed. Cir. 1988),* rev'g*, 14 Cl. Ct. 23 (1987)* rev'd*, 110 S. Ct. 462 (1989)*, 14 SUFFOLK TRANSNAT'L L.J. 336, 346 n.25 (1990) (contending foreign characterization of transactions afforded little weight in court).

28. West, *supra* note 3, at 157 n.32; *see* Timothy A. Rybacki, Comment, *Separation Anxiety: The Repatriation of Foreign Tax Credits Without Associated Income via the Technical Taxpayer Rule's Joint and Several Liability Provision*, 19 EMORY INT'L L. REV. 1575, 1605 (2005) (noting how difference in application of same terms between countries creates uncertainty).

29. *See* Kirsten S. Linder, Note, *Hybrid Taxation: The Dual Function and Creditability of the U.K. Windfall Tax*, 65 TAX LAW. 429, 444 (2012) (pointing to how U.K.'s windfall tax creates uncertainty and discourages foreign investments); *cf.* Alsobrook, *supra* note 18, at 880 (asserting complicated tax laws weaken U.S. companies' competitiveness).

30. 133 S. Ct. at 1899-00. The Court first looked to I.R.C. § 901(b)(1) of the Internal Revenue Code and noted that "income, war profits, and excess profits taxes . . . are creditable against U.S. income taxes." *Id.* at 1899. The Court then examined Treasury Regulation § 1.901-2(a)(1)(ii), determined that the predominant-character test should be applied, and therefore ultimately decided that the substantive effect of the tax prevailed. *Id.* at 1900.

31. *Id.* at 1901-02; *see* Treas. Reg. § 1.901-2(a)(1)(ii) (as amended in 2013).

32. 133 S. Ct. at 1902-03.

33. *Id.* at 1903, 1907.

income disguised as a tax on the difference between two values.[34] The second step in the Court's analysis involved deciding whether it was appropriate to rearrange the tax formula to show that its effect was to tax excess profits.[35] A tax on profits above a certain threshold is a tax on excess profits; if the tax formula could be rearranged as PPL argued, then it would show that the levy was actually a tax on 51.17% of excess profits.[36] Conversely, the Internal Revenue Service (IRS) argued that the levy was a 23% tax on the difference between what the floatation values should have been and the floatation values as they actually were.[37] Ultimately, the Court concluded that its decision in *Commissioner v. Southwest Exploration Co.*, which stated that "tax law deals in economic realities, not legal abstractions," provided controlling guidance and jettisoned the IRS's argument that rearrangements of the tax formula should not be considered.[38]

The Supreme Court then reasoned that a foreign government's characterization of a tax does not determine how the tax will be treated for purposes of I.R.C. § 901(b).[39] The Court further reasoned that, based on well-settled precedent, the crucial question was whether the tax, "if enacted in the U.S., would be an income, war profits, or excess profits tax."[40] The Court then determined that section 1.901-2(a)(3)(i) of the Treasury Regulations provides that a foreign levy's predominant character is that of a U.S. income tax when it's "likely to reach net gain in the normal circumstances in which it applies."[41]

The Supreme Court appropriately heeded the long-standing principle that the term "income"—at least for FTC purposes—should be examined under the predominant-character test and in light of whether it would be considered income in the United States.[42] As Justice Sotomayor discussed in her concurring opinion, however, the Court should have clarified its interpretation

34. *See id.* at 1903.

35. *See id.* at 1905.

36. *See* 133 S. Ct. at 1905. The formula, when rearranged, "is economically equivalent to the difference between the profits each company *actually* earned and the amount that the Labour government believed it *should* have earned given its flotation value." *Id.*

37. *Id.* at 1901.

38. *Id.* at 1905 (quoting Comm'r v. Sw. Exploration Co., 350 U.S. 308, 315 (1956)).

39. *See* 133 S. Ct. at 1902; Treas. Reg. § 1.901-2(a)(1)(ii) (as amended in 2013) (stating foreign tax creditable if "an income tax in the U.S. sense"); *see also* Biddle v. Comm'r, 302 U.S. 573, 579 (1938) (noting statute not written with reference to foreign determination).

40. 133 S. Ct. at 1902.

41. *Id.* at 1902 (quoting Treas. Reg. § 1.901-2(a)(3)(i)).

42. *See id.* at 1901-02 (determining predominant-character test controls analysis of foreign tax); *see also supra* note 24 and accompanying text (discussing predominant-character test). Because the Internal Revenue Code and corresponding regulations provide "detailed criteria" for determining whether a tax is creditable, there is little reason for the court to look much further than the statute and regulations. *See* RICHARD E. ANDERSEN, FOREIGN TAX CREDITS ¶ 3.01[1] (2014) (stating Treasury Regulations identify elements necessary to credit foreign tax in United States). A court may need to examine the foreign legislative history in analyzing the levy, however. *See supra* notes 9-12 and accompanying text (discussing Court's examination of U.K.'s legislative history of windfall tax).

of the language from section 1.901-2(a)(1)(ii) of the Treasury Regulations that "a tax either is or is not an income tax, in its entirety, for all persons subject to the tax."[43] Although the majority opinion discussed the regulation and its relation to the predominant-character test in passing, the Court did not address the effect of the outlier companies omitted from the reformulation of the tax equation.[44] Such a discussion, would provide clarity for foreign countries when creating tax formulations and for U.S. companies doing business in those countries.[45]

The Supreme Court also properly followed the established standard that substance trumps form in analyzing issues of tax law.[46] The Court's holding provides certainty for companies by establishing that the economic effect of a foreign levy will drive a court's analysis in considering whether the tax is an income tax under U.S. law.[47] The holding also creates a corresponding challenge, however, because companies must now determine whether the actual effect of a tax is to tax income, and they cannot simply accept the foreign tax on its face.[48] Moreover, because the Court allowed the taxpayer to reformulate the tax equation, companies may attempt to show that certain foreign

43. *See* 133 S. Ct. at 1910 (Sotomayor, J., concurring) (identifying alternative creditability analyses); Treas. Reg. § 1.901-2(a)(1)(ii). Justice Sotomayor suggested in *PPL* that the Court could have looked at the five companies that had different initial periods as outliers, thereby making it improper to reformulate the tax as an excess profits tax. *See* 133 S. Ct. at 1907 (Sotomayor, J., concurring). The issue, however, was only raised in an amicus brief and the IRS did not argue the outliers' relevance before the Third Circuit. *Id.* at 1910 (Sotomayor, J., concurring).

44. *See* 133 S. Ct. at 1904. For most, *but not all*, companies, the formula's effect was to tax profits above a certain threshold at a rate of 51.71%. *See id.* at 1905; *see also* Farag, *supra* note 22, at 6 (explaining effect of taxation on most companies).

45. *See* 133 S. Ct. at 1901-02 (recalling how predominant-character tax analysis operates). Because the predominant-character standard is relatively "elastic," it may be unclear for companies in determining whether a tax conforms to the test. *See* Linder, *supra* note 29, at 434. In *PPL*, the majority expanded the predominant-character test by reasoning that a tax can be an income tax even when it does not affect all of the taxpayers in the same way. *See* Farag, *supra* note 22, at 6. Courts may ignore outliers, but to what extent they may do so is unclear from the Supreme Court's decision in *PPL*. *See id.* at 6-7.

46. 133 S. Ct. at 1905 (reasoning Court follows form over substance). The Court stated that "the algebraic reformulations illustrate the economic substance of the tax and its interrelationship with net income." *Id.*; *see supra* note 23 and accompanying text (discussing general principle of substance over form in tax law). The fact that the Court looked at the U.K.'s legislative history in determining whether the tax was a tax on income may encourage other countries to make available the legislative intent and reasoning underlying their taxes laws when they are promulgated, thereby promoting greater clarity in foreign tax law. *See* Linder, *supra* note 29, at 434. "The important thing is whether the country is attempting to reach some net gain, not the form in which it shapes the income tax or the name it gives." Bank of Am. Nat'l Trust & Sav. Ass'n v. United States, 459 F.2d 513, 519 (Ct. Cl. 1972).

47. 133 S. Ct. at 1902 (noting "the crucial inquiry is the tax's economic effect"). The rationale employed in the Supreme Court's *PPL* decision will allow companies to rely on the "economic realities" of a foreign tax instead of "legal abstractions." Farag, *supra* note 22, at 6 (commenting on effect of Court's holding).

48. *See* Andersen, *supra* note 42, ¶ 3.01[4] (stating essential component in applying predominant-character standard). Furthermore, many tax experts believe the FTC limitation is unnecessarily complex. *See* Alsobrook, *supra* note 18, at 876-78 (pointing to multiple alterations to FTC and heightened complexity of legislation). Alsobrook argues that lack of certainty and stability within U.S. tax law regarding international income is among the reasons for inadequate U.S. competitiveness globally. *See id.* at 880.

government tax-levy equations can be rearranged in order to claim more foreign tax credits.[49]

Finally, the Court correctly allowed extrinsic evidence and examined the legislative history of the U.K. windfall tax.[50] U.S. courts have long had to deal with foreign countries attempting to use the FTC to their fiscal advantage—that is, imposing an income-like tax to exploit the FTC offset against an American company's U.S. taxes.[51] One author, for example, argues that most countries "cheat around the edges" to gain tax advantages.[52] Such actions by foreign countries can not only siphon money from the United States, but also may distort the purpose and goals of the U.S. tax code.[53] The Supreme Court's intentional examination of the legislative history of the foreign tax in *PPL* sets a precedent enabling other courts to eschew such mischief.[54]

In *PPL Corp. v. Commissioner*, the Supreme Court furthered existing precedent by holding that the substance of a levy, not its formulaic construction, serves as the proper basis for an inquiry into its character for tax-credit purposes. The Supreme Court analyzed the issue according to the predominant-character test under section 1.901-2 of the Treasury Regulations, holding that the tax formula adopted by the U.K. Labour Party was an income tax in the United States for tax-credit purposes because the economic reality of the levy taxed the income of a company. While *PPL* provides some degree of

49. *See* Farag, *supra* note 22, at 6 (suggesting taxpayers should check previously noncreditable tax for creditable reformulation); *see also* Timothy Nuccio, Note, *Substance Over Form: Creditability of the 1997 U.K. Windfall as an Excess Profits Tax Under I.R.C. § 901*, 22 TRANSNAT'L L. & CONTEMP. PROBS. 267, 290 (2013) (arguing principles of mathematics relevant in demonstrating similarity of U.K. tax and U.S. income taxes).

50. *See* 133 S. Ct. at 1900-01 (examining U.K. Labour government's purpose of tax at length); Nuccio, *supra* note 49, at 284-89 (exploring use of extrinsic evidence to show substance of foreign tax under I.R.C. § 901). In *PPL*, the Commissioner argued unsuccessfully that when examining the tax law, extrinsic evidence should not be considered beyond the U.K. Labour Party's characterization. 133 S. Ct. at 1903. Case law, however, establishes that such an inquiry is proper. *See, e.g.*, Inland Steel Co. v. United States, 677 F.2d 72, 84 (Ct. Cl. 1982) (utilizing extrinsic evidence of foreign "schedular" taxes in determining tax refund); Bank of Am. Nat'l Trust & Sav. Ass'n v. United States, 459 F.2d 513, 516 (Ct. Cl. 1972) (using extrinsic evidence to determine question of foreign tax law); Exxon Corp. v. Comm'r, 113 T.C. 338, 353 (1999) (looking to extrinsic evidence surrounding petroleum revenue tax).

51. *See* Motland v. United States, 192 F. Supp. 358, 361 (N.D. Iowa 1961) (reasoning Cuba imposed so-called "income tax" on capital taken out of country); *see also* Waterman S.S. Corp. v. United States, 203 F. Supp. 915, 926 (S.D. Ala. 1962) ("Irrespective of the name of the title under which a foreign tax is levied, credits for purposes of Section 131 are determined by revenue laws and court decisions of the United States and not by the label of foreign taxing authorities."), *aff'd*, 330 F.2d 128 (5th Cir. 1964). "What is required is that the predominant character of the U.S. and foreign taxes be enough alike that, in most cases, it can realistically be said that the same thing is being taxed by the two countries." BITTKER & LOKKEN, *supra* note 20, ¶ 72.4.1.

52. *See* Roin, *supra* note 16, at 588 & n.147 (discussing how most countries, including United States, respond to other countries' tax systems).

53. *See* Roin, *supra* note 16, at 586 (stating Congress's goal of "remov[ing] tax considerations as an element of business location decisions"); *see also* Comm'r v. Court Holding Co., 324 U.S. 331, 334 (1945) ("To permit the true nature of a transaction to be disguised by mere formalisms . . . would seriously impair the effective administration of the tax policies of Congress.").

54. *See* 133 S. Ct. at 1900-01 (probing purpose of U.K.'s tax).

certainty for U.S. businesses in that they may rely on U.S. characterizations of taxes, it is not without its shortcomings. Ambiguities arising from reformulations of tax equations and extrinsic evidence relating to the legislative purposes behind foreign levies may complicate such inquiries.

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