Tax disputes in transferable tax credit transactions: What buyers need to know

Presented by DLA Piper and Crux

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Speaker introductions

Drew Young
Partner, Tax Credit Practice Lead
DLA Piper
drew.young@us.dlapiper.com

Joe Myszka
Partner
DLA Piper
joseph.myszka@us.dlapiper.com

Lindsey Jordan
Of Counsel
DLA Piper
lindsey.jordan@us.dlapiper.com

Sienna White
Senior Associate
DLA Piper
sienna.white@us.dlapiper.com

Stephanie Deterding
Managing Director, Markets & Transactions
Crux Climate
stephanie@cruxclimate.com

Jake Wolf
General Counsel
Crux Climate
jake@cruxclimate.com

Agenda

- Legislative and regulatory update
- Summary of market trends
- Risk mitigation strategies

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Legislative and regulatory update

One Big Beautiful Bill Impact to IRA Credits

The OBBB was signed into law on July 4.

The major highlights of the OBBB are:

- Accelerating phase out of the credits, particularly for solar and wind ITCs and PTCs;
- Restricting taxpayers that can claim the credit by prohibiting such credits for a “prohibited foreign entity” (“PFE”), “specified foreign entity” (“SFE”), and “foreign-influenced entity” (“FIE”); and
- Restricting the character of projects and components that may qualify for credits based on whether “material assistance” is provided by a PFE.

No direct impact on transferability.

Key Effective Dates

Section	Phaseouts	FEOC
45	No change	N/A
45Y	Wind/solar • No change for projects that begin construction before July 4, 2026 • For projects that begin construction after July 4, 2026, must be PIS before 2028	Effective for projects that begin construction in 2026 or later
45X	Wind • No credit for components produced and sold after 2027	Effective as of 2026
48	No change	N/A
48E	Wind/solar • No change for projects that begin construction before July 4, 2026 • For projects that begin construction after July 4, 2026, must be PIS before 2028	Effective for projects that begin construction in 2026 or later

Begun Construction Uncertainty

Relevance of begun construction under OBBB:

- For solar and wind ITCs and PTCs, projects that begin construction before July 4, 2026, continue to be eligible for the credits regardless of when they are placed in service (subject to continuity requirement)
- Material assistance rules do not apply to projects that begin construction before Jan. 1, 2026

On July 7, President Trump issued an executive order, requiring Treasury to issue guidance to:

- Ensure that policies concerning the “beginning of construction” are not circumvented, including by preventing the artificial acceleration or manipulation of eligibility and by restricting the use of broad safe harbors unless a substantial portion of a subject facility has been built; and
- Implement the FEOC restrictions in the OBBB

Such guidance is to be issued within 45 days of enactment (August 18)

OBBB: Practical Implications

What does the OBBB mean for:

- Deals that have closed for 2025
- Deals that have closed for later years
- 2025 deals not yet closed
- The state of the market going forward

Summary of market trends

Pricing for tax credits has generally risen, but average pricing for 2025 ITCs is down

Pricing for 2024 vintage-year credits reflect less liquidity in the market, as available supply became very limited in Q2 2025

Pricing for 2025 vintage-year tax credits was roughly flat quarter over quarter, reflecting a modest decline in ITCs and increase in PTCs

Quarter-over-quarter pricing by credit type, year

Indicative pricing for traditional tech type, over $20 million notional value

Spec	2Q2025	1Q2025	% change
2024 ITC	$0.940	$0.940	0.0%
2025 ITC	$0.917	$0.918	-0.1%
2026 ITC	$0.905	$0.910	-0.6%
2024 spot PTC	$0.930	$0.953	-2.4%
2025 spot PTC	$0.930	$0.926	+0.4%
Short-term strip (2–3 years)	$0.920	$0.920	unchanged
Long-term strip (>3 years)	$0.913	$0.910	+0.3%

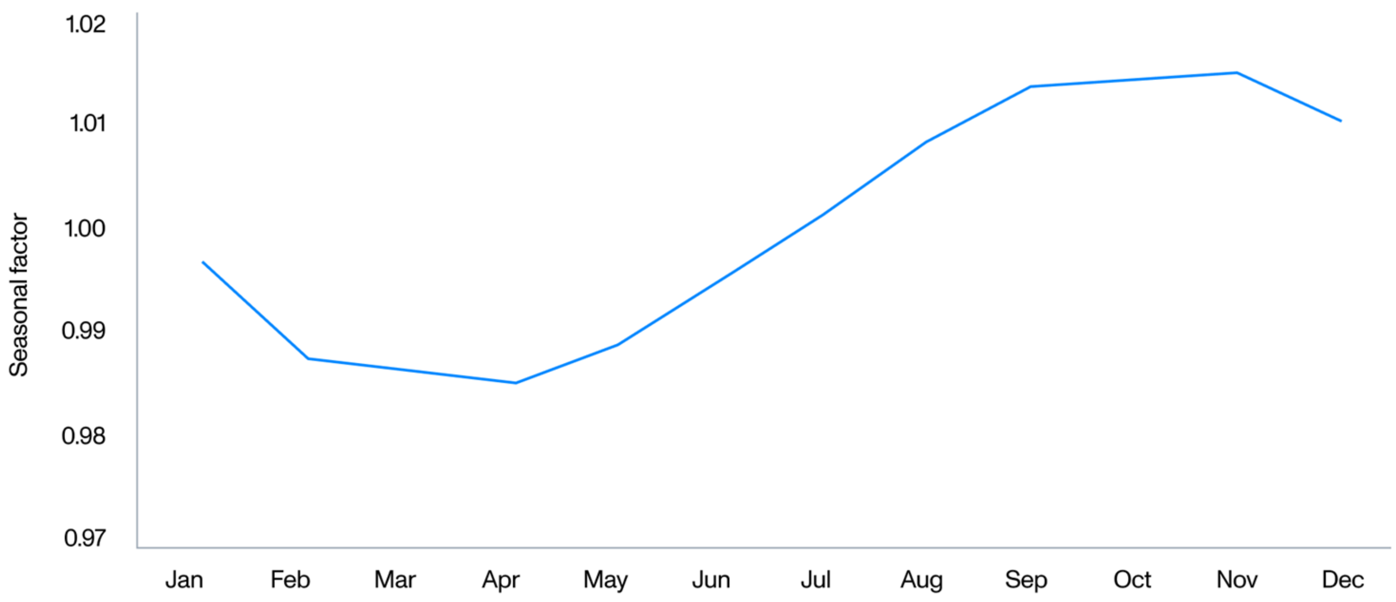
Crux has observed intra-year pricing trends

Crux observed a seasonal trend in pricing for ITCs in 2024, which appears to be repeating in 2025

Q1 pricing tends to be lowest (for the current year tax credit vintage, *i.e.,* 2024 tax credits in 2024), and prices rise around 2 percent on average from Q1 to Q4

Many factors determine price, and the tax credit market is still very new, but timing of the transaction and related payment can be important factors

Figure 41. ITC approximate seasonality trend by month (factor, average = 1.00)



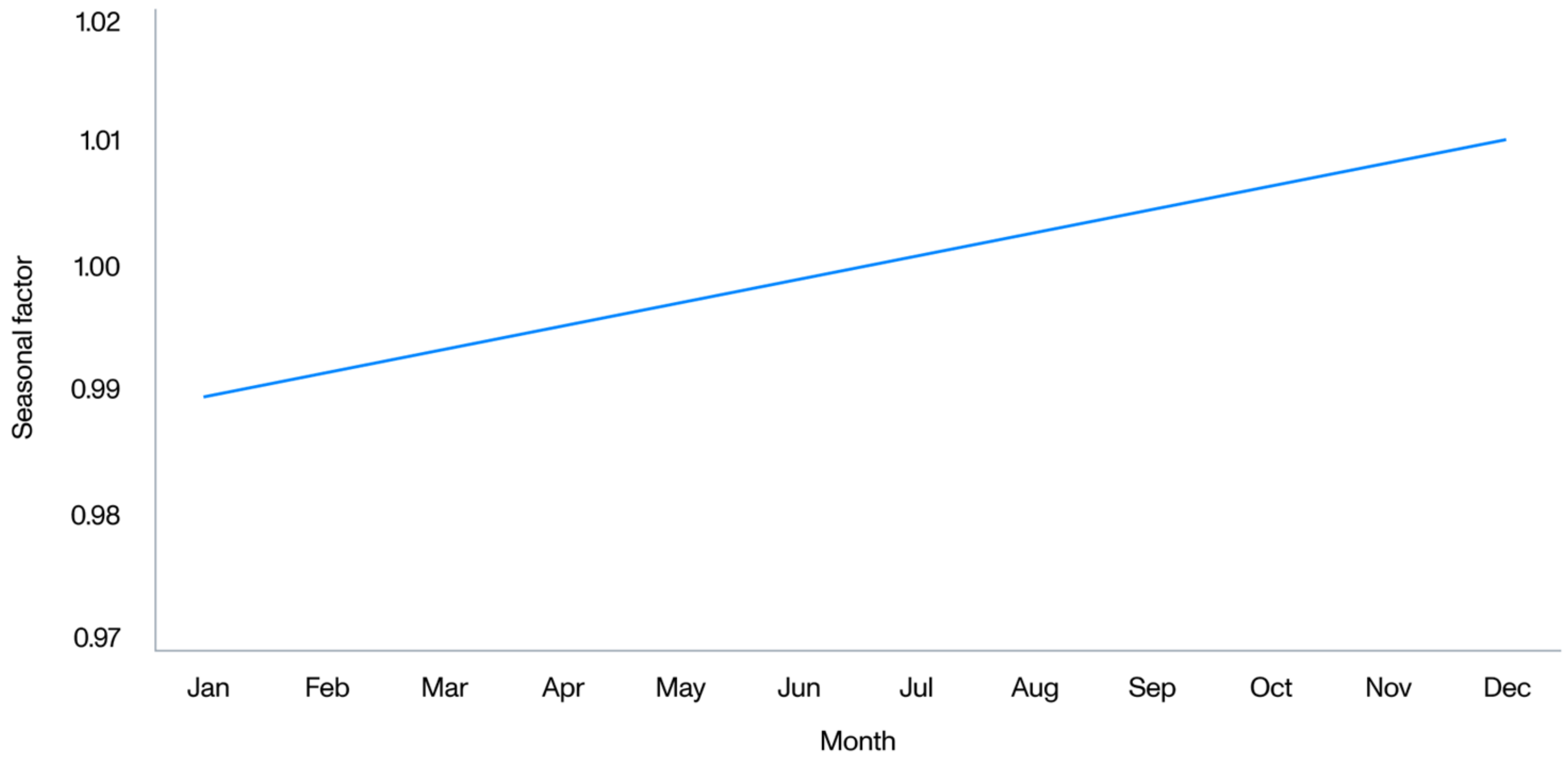
PTC pricing trends are less pronounced, but similar to ITCs

PTCs do not appear to exhibit a seasonal trend in the same manner as ITC deals.

The data indicates that the average value of a PTC rises modestly and linearly over the course of a year, increasing by about 2% from January to December.

Quarter over quarter PTC pricing appears in line with the historic seasonal trend.

Figure 42. PTC approximate seasonality trend by month (factor, average = 1.00)



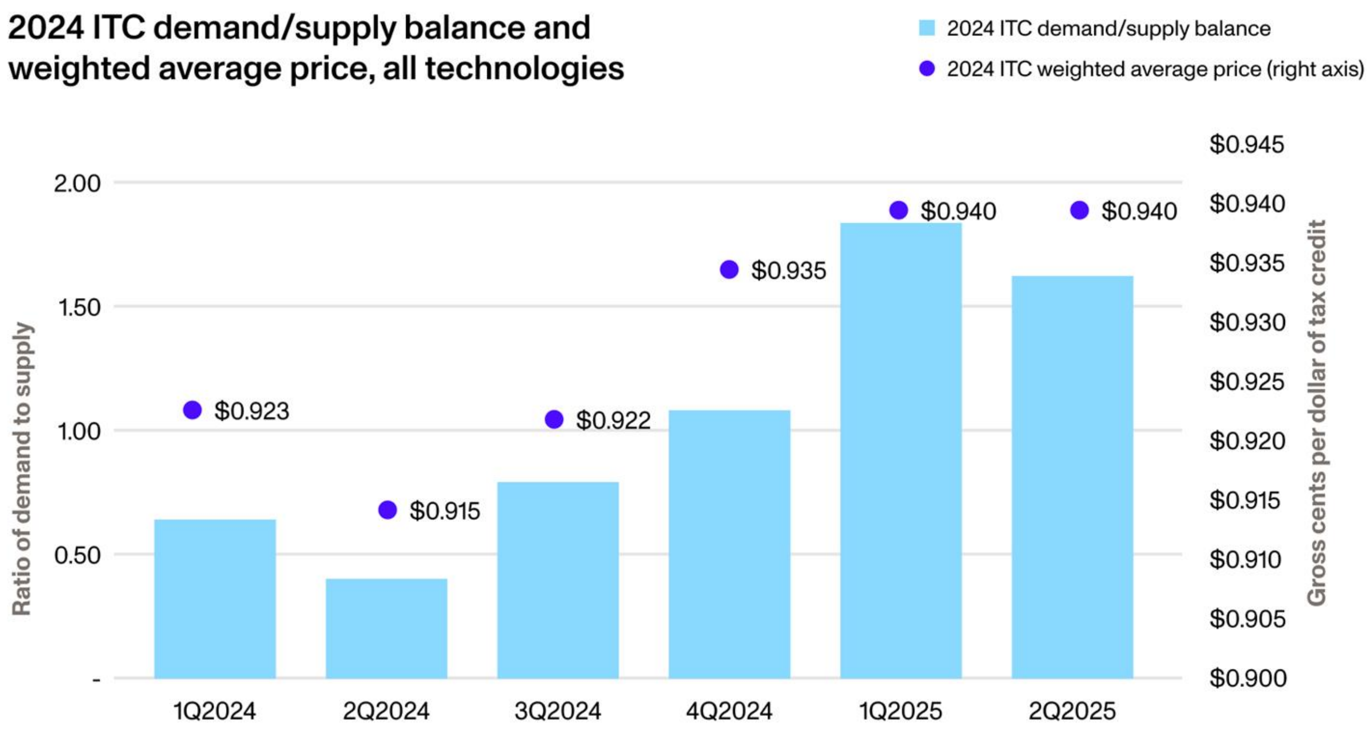
2024 ITC demand-supply balance

Demand for 2024 ITCs remains elevated but declined slightly in Q2

Crux calculated the ratio of demand to supply for all ITCs on a quarterly basis

Demand and price for 2024 tax credits have risen in tandem through 1Q25

In Q2, demand declined slightly but remains elevated at >1.5 times the available supply. Pricing was sustained at 94 cents on average

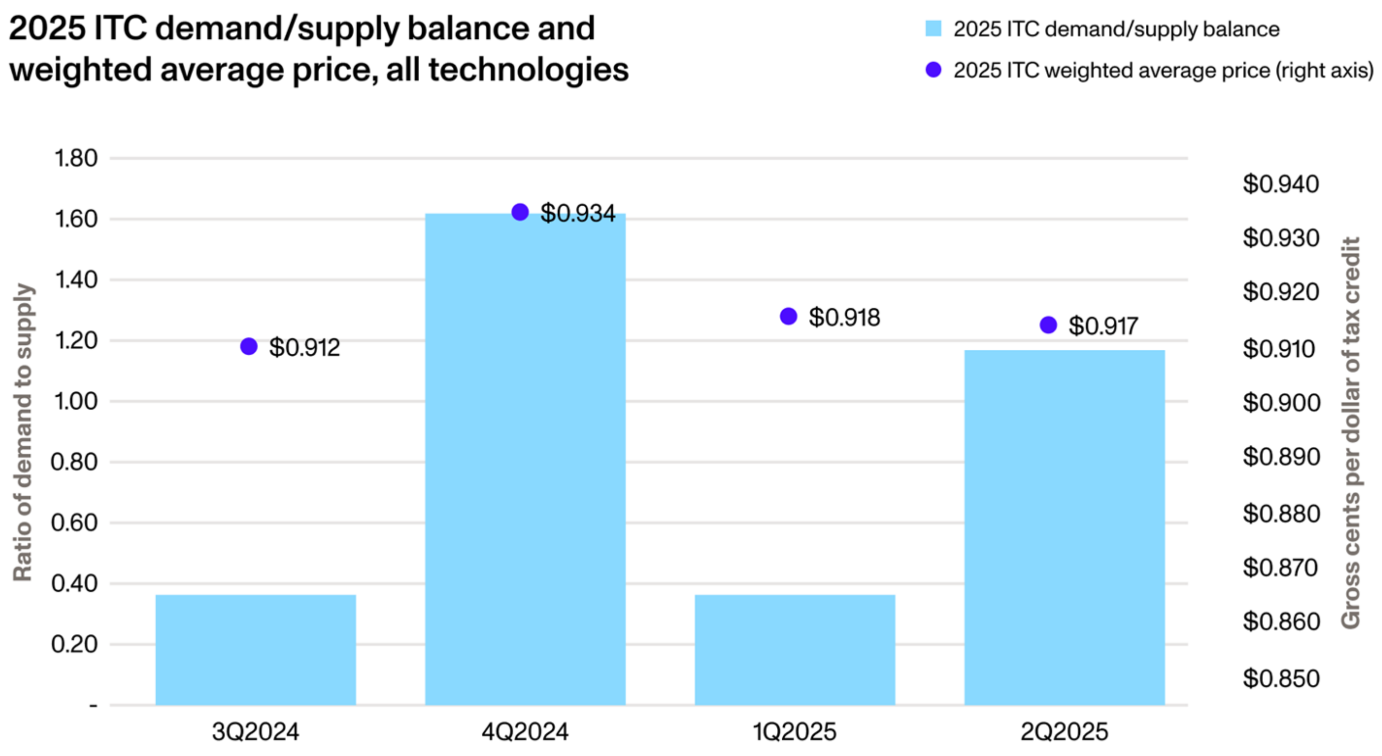


2025 ITC demand-supply balance

Demand for 2024 ITCs remains elevated but declined slightly in Q2

Demand for 2025 ITCs rose materially in Q2, to more than $1 for every dollar of available supply, up $0.40 for every dollar in Q1 2025

Average pricing is relatively flat quarter over quarter and remains slightly below the annual average price range for ITCs ($0.92 to $0.925)

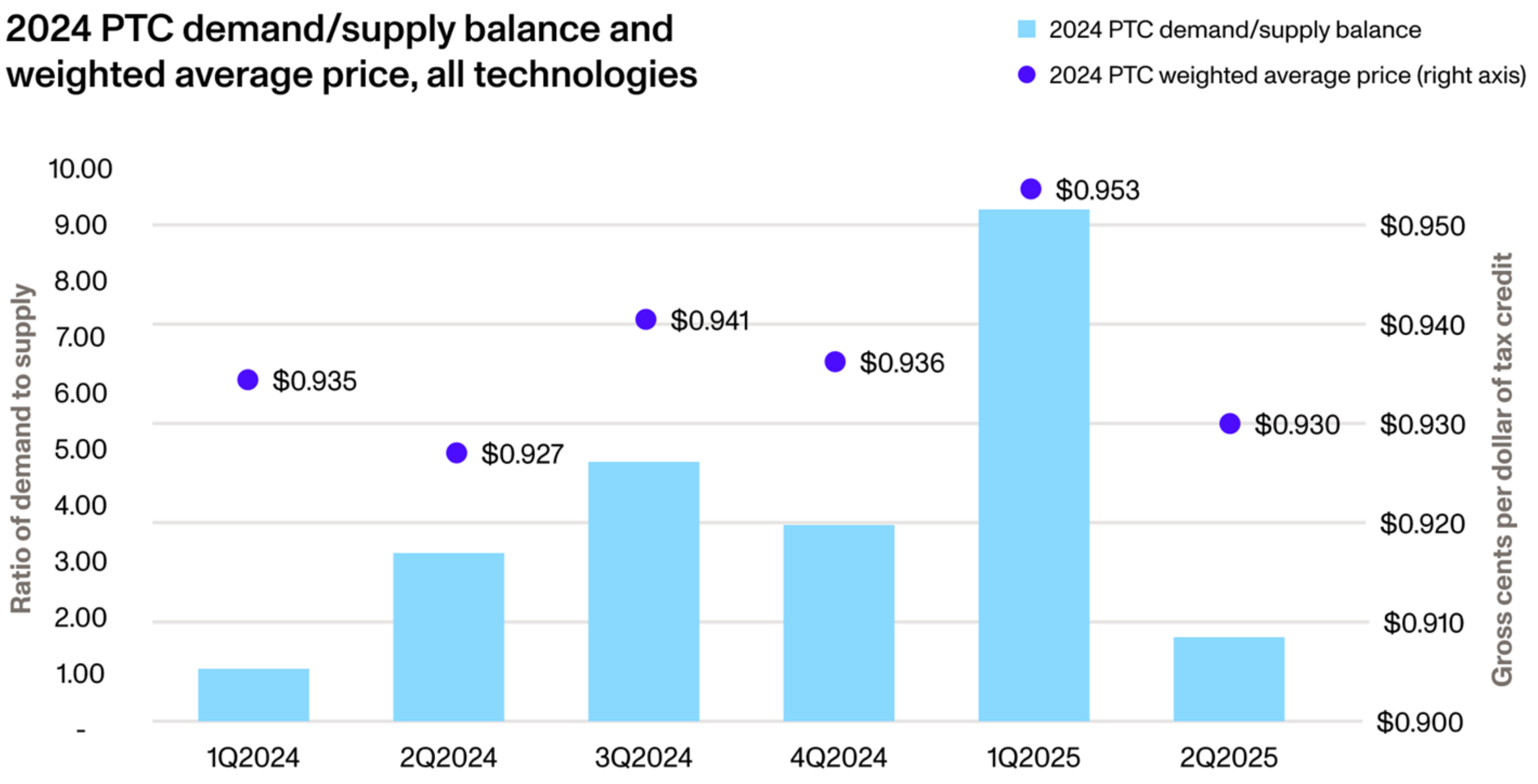


2024 PTC demand-supply balance

Demand for 2024 PTCs declined due to low supply

Limited supply of 2024 PTCs led to a reduction in demand as buyers turn their focus to 2025.

Average pricing also declined, reflecting a reduction in average deal size as well as limited supply. All bids in 2Q2025 were on listings $50 million or less.

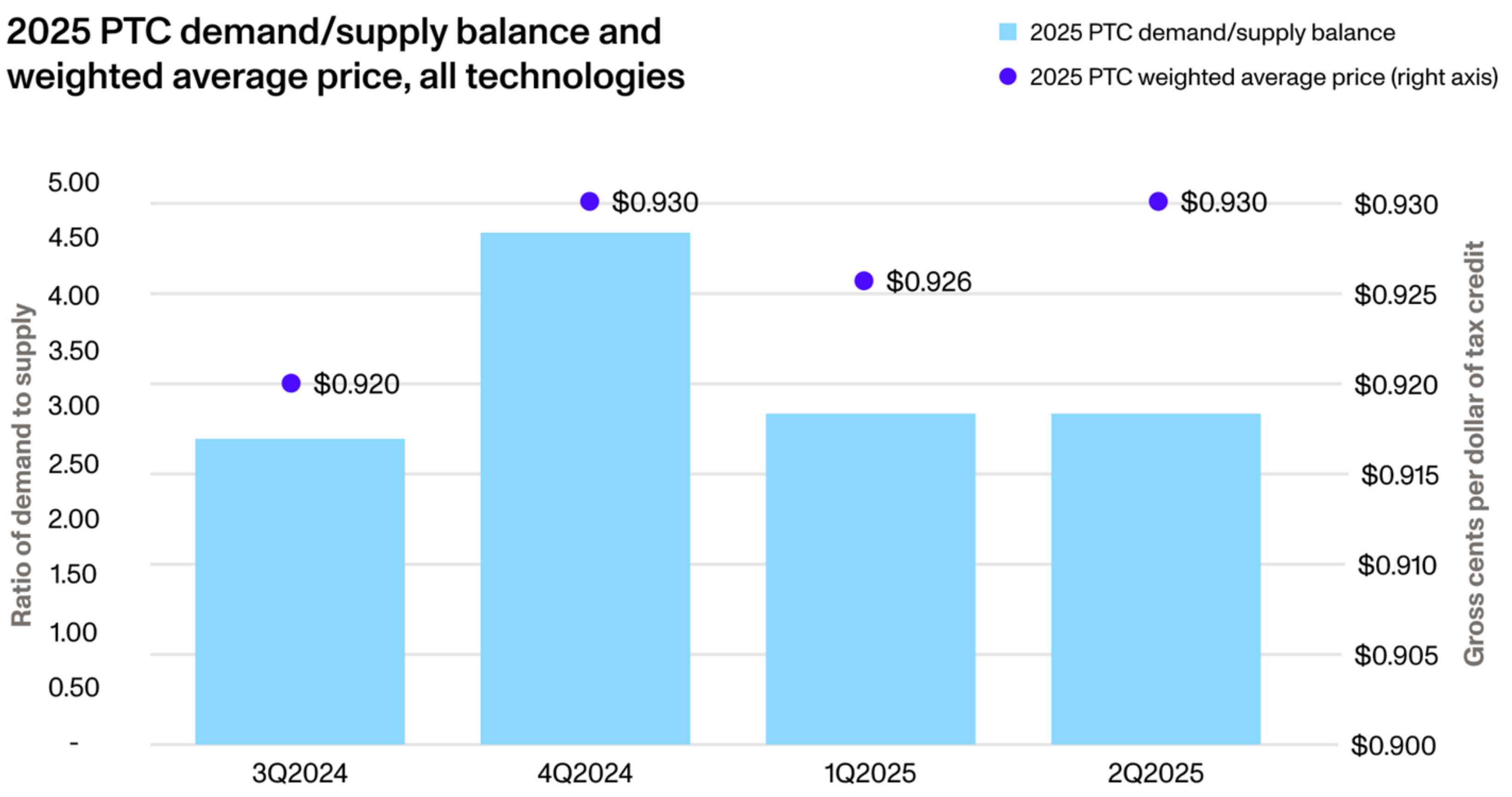


2025 PTC demand-supply balance

Demand remains steady, price increased modestly

Demand for 2025 spot PTCs is approximately in line with 1Q2025 at $2.80 for every dollar of available supply.

Price increased slightly, to $0.93 cents on average from $0.926 in 1Q2025.

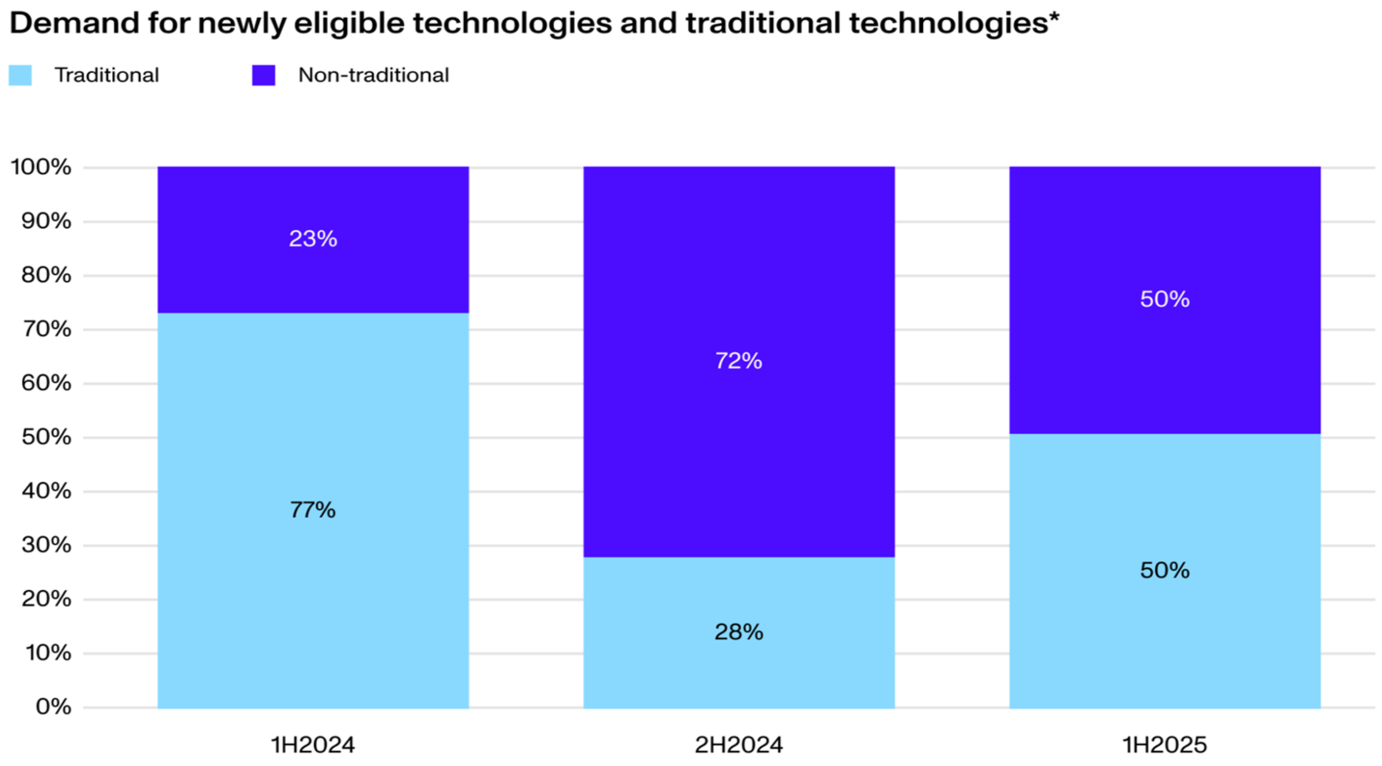


Buy-side interest is balanced between non-traditional and traditional technology types

A significant trend in 2024 toward newly eligible technologies (including both novel ITC-eligible technologies and new categories of PTCs) has persisted into 2025

In the first half of 2025, demand was split evenly between traditional (solar, wind, and solar+storage) and non-traditional technologies

*2024 data reflects Crux's 2024 Market Intelligence Report, while 2025 data reflects from Crux platform activity



Advanced manufacturing and nuclear PTCs and solar ITCs are in demand

Buyers are showing significant interest in PTCs, boosting demand for advanced manufacturing, nuclear, and wind technology categories

Demand for tax credits from solar projects represents the largest share of market activity for ITCs, followed by hybrid solar+storage and storage ITCs

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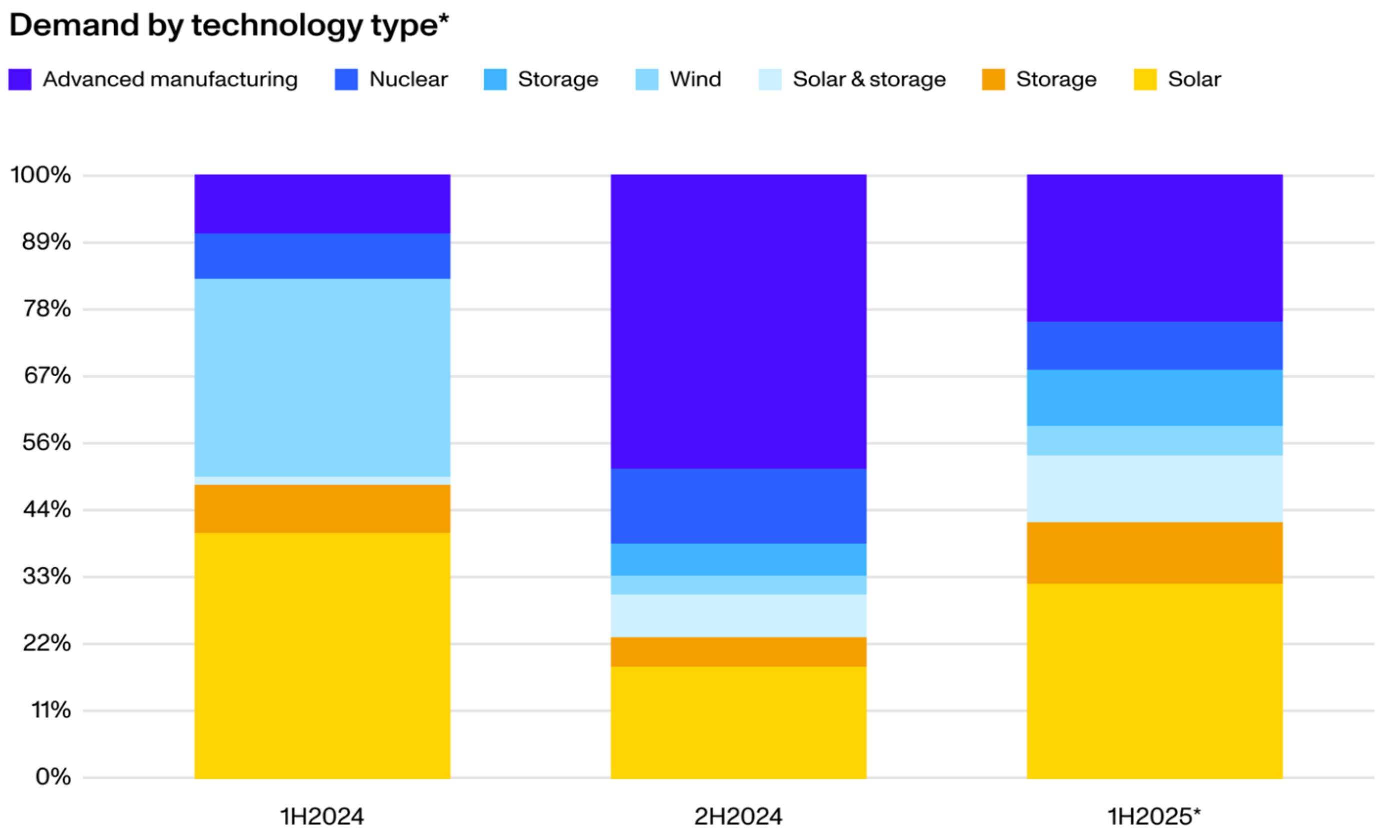

Risk mitigation strategies

Tax credit transaction risks

- Structure
- Recapture
- Counterparty risk
- Eligibility and qualification
- Excessive credit transfer and basis

Risk management throughout the deal timeline

1. Term sheet
2. Pre-closing
    - Diligence
    - Negotiating contractual protections
3. Post-closing
    - Covenants
    - Ongoing insurance protection

Counterparty alignment may be key

Because tax credit transfers inherently include numerous transaction risks for buyers, alignment on key commercial points at the term sheet stage can reduce transaction costs, streamline closing, and increase the likelihood of success at each stage. The following considerations should be addressed at the term sheet or LOI stage:

- What type of indemnification would be acceptable? And how would it be calculated?
  - So-called “no fault” indemnity vs. indemnification solely for breaches of representations and covenants
  - Face value of tax credits vs. transfer price paid for tax credits
- Would tax credit insurance be required? If not, how would credit-worthiness be demonstrated for indemnification purposes?
- What level of tax credit diligence would be expected? And in what format would material be provided?
  - Underlying transaction documents vs. third-party reports vs. only seller representations
- How experienced is the counterparty? And does the law firm(s) involved have an established track record?
- How would audit risk and tax contests be handled?
- Are there buyer-specific sensitivities that should be socialized at the outset?
- Change in law risk, nationality/industry of counterparty, geographic location of project/manufacturing facility, etc.

Other risks and mitigants

Description of risk	ITC	PTC	Typical mitigants used by buyers
Recapture or structure risk Projects must remain in service for five years after placement in service. If projects are sold (not including partnership interests) or destroyed and not rebuilt, the credits are “recaptured.” This risk steps down 20 percent per year.	Applicable	Not applicable	• Property and casualty insurance • Seller indemnity/guaranty • Tax credit insurance • Legal opinions • Lender forbearance (if applicable)
Excessive credit transfer risk/basis Credits must be valued properly. If an audit assesses an inflated value, the IRS can disallow a portion of the credits, with associated penalties.	Applicable	Not applicable	• Appraisals and cost segregation reports • Seller indemnity/guaranty • Tax credit insurance
Eligibility and qualification Projects must demonstrate qualification for underlying credit (based on technology, eligible energy property) and any bonus credits (*e.g.,* PWA, domestic content, or energy communities).	Applicable	Applicable	• Diligence • Legal opinions • Seller indemnity/guaranty • Tax credit insurance

Audit exposure

Who bears the risk of IRS audit?

- By statute: Buyer
- Contractually shifted back to seller or an insurer or both

On what issues does the IRS focus?

- The IRA is too recent to have specific precedent to draw on
- Historical audit issues:
  - Qualification (*e.g.*, begun construction or placed in service dates) and
  - Quantification (*e.g.*, basis step-ups and cost segregation)
- Recent audit experience

Building an audit file

- Current tax dispute landscape will evolve
- Key considerations for transferrable credits:
  - Minimum documentation requirements
  - Contractual rights / obligations → counterparty + insurance
  - Diligence file = starting point
- OBBB adds further complexities:
  - Statutory interpretation – current uncertainty and future guidance
  - Extended statute of limitations (6 years)
  - PFE considerations
  - Enhanced penalty environment
  - Supplier penalties

DLA Webinar Series

https://www.dlapiper.com/en-us/events/clean-energy-tax-credit-and-incentives-cle-speaker-series

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