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"Supreme Court Throws IRS a Disgorgement Deduction Knuckleball"

Peter Lowy quoted in "Supreme Court Throws IRS a Disgorgement Deduction Knuckleball"

Tax Notes

July 2, 2020

In an article in *Tax Notes* on July 2, 2020, Chamberlain Hrdlicka shareholder Peter Lowy is quoted relating to the June 22, 2020 Supreme Court opinion in *Liu v. SEC*, in which the Supreme Court upheld the SEC's access to disgorgement as a remedy. The article points out that in the process, the Court cut holes in the IRS and Treasury's position that disgorgement is always a penalty, and attributes to Lowy the observation that *Liu* could impact ongoing controversies regarding the deduction of disgorgement payments that predate the effective date of the TCJA. Lowy emphasized that while the central question after the TCJA is whether a payment fits the restitution exception, before the changes the issue turned on whether the payment was a penalty.

Lowy further observed that post-TCJA, the new identification rule — requiring potentially deductible payments to bear a label using a variation of restitution, remediation, or compliance in the relevant order or agreement — should eliminate many possible disputes for post-TCJA payments.