Chamberlain Hrdlicka
Attorneys at Law

Contact

Houston
1200 Smith Street, Suite 1400
Houston, Texas 77002-4310
Tel: 713.658.1818
Fax: 713.658.2553

Atlanta
191 Peachtree Street, N.E.,
Forty-Sixth Floor
Atlanta, Georgia 30303
Tel: 404.659.1410
Fax: 404.659.1852

Philadelphia
50 South 16th Street, Suite 1700
Philadelphia, PA 19102
Tel: 610.772.2300
Fax: 610.772.2305

San Antonio
112 East Pecan Street, Suite 1450
San Antonio, Texas 78205
Tel: 210.253.8383
Fax: 210.253.8384

www.chamberlainlaw.com

"Antideference Precedent a Mixed Bag for Subregulatory Guidance," Tax Notes

Tom Cullinan adds insight to Tax Notes

August 1, 2024

In an article published in Tax Notes on July 25, 2024, Former Counselor to the IRS Commissioner and Shareholder Tom Cullinan's insight is included among a roundup of tax lawyers discussing how "the Supreme Court altered the administrative law landscape with *Loper Bright Enterprises Inc. v. Raimondo*, No. 22-451 (S. Ct. 2024), by ditching a 40-year-old rule of deference to some agency regulations. The prior precedent incorrectly credited agencies with some special competence at interpreting vague statutes, a job that should remain with the courts, Chief Justice John G. Roberts Jr. wrote in the decision."

Cullinan shared with the reporter that he thinks the *Loper Bright* decision will have no effect on IRS subregulatory guidance because "it was already well settled that none of that was entitled to Chevron deference." He also noted that a Treasury policy statement from 2019 expressly states that Treasury and the IRS will not argue that their subregulatory guidance is entitled to Chevron deference. The law concerning subregulatory guidance like Notice 2021-20 already clearly stated that it was never entitled to *Chevron* deference, he added.

The article also mentioned Cullinan's recent post on LinkedIn following the *Loper Bright* decision outlining a potential post-*Chevron* deference scenario — the IRS and Treasury could steer toward issuing more subregulatory guidance instead of going through the regs process. "What's the point of going through the heavy lift of issuing a regulation now that the courts will need to review everything de novo?" added Cullinan.

To review the full article, subscribers may click here.