

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

300 Conshohocken State Road
Suite 570
West Conshohocken, PA 19428
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

"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 SECs access to disgorgement as a remedy. The article points out that in the process, the Court cut holes in the IRS and Treasurys 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.