

Supreme Court overruling of *Chevron v. NRDC* expected to strengthen challenges to tax regulations

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In *Loper Bright Enterprises v. Raimondo*, the Supreme Court overruled *Chevron v. NRDC*, holding that *Chevron* deference to an agency's permissible interpretation of an ambiguous or silent statute conflicted with the longstanding proposition that courts decide legal questions. The effect will reach all areas of federal agency action – including those of Treasury – although the full effect of the decision remains to be seen.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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¹ *Chevron U.S.A., Inc. v. Natural Resources Def. Council, Inc.*, 467 U.S. 837, 843 (1984).

² *Smiley v. Citibank (South Dakota) N.A.*, 517 U.S. 735, 740-41 (1996).

Tax takeaways

1. Challengers to Treasury regulations likely to be emboldened

2. But Treasury regulations will continue to be given respect and possibly even controlling discretion depending on the particular statutory delegation

3. No immediate change in administrative appeals and some potential change in Treasury's approach to promulgating regulations

[17] *Id.* at 17.

[22] *Id.* at 18 (quoting *Michigan v. EPA*, 576 U.S. 743, 750 (2015)).

³ 603 U.S. ___ (2024) (No. 22-451), together with *Relentless, Inc. v. Dep't of Commerce*, No. 22-1219).

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⁴ *Id.*, slip op. at 7-8.

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⁵ *Marbury v. Madison*, 1 Cranch 137 (1803).

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⁶ *Loper Bright*, slip op. at 9 (quoting *Decatur v. Paulding*, 14 Pet. 497, 515 (1840)).

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⁸ 5 U.S.C. § 706.

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¹⁰ *Id.* at 16.

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¹¹ *Loper Bright* (Thomas, J., concurring), slip op. at 1-4.

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¹³ *Loper Bright* (Kagan, J., dissenting), slip op. at 1-33.

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¹⁴ *Mayo Foundation for Medical Educ. & Research v. United States*, 562 U.S. 44, 55 (2011).

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¹⁵ See, e.g., *United States v. Home Concrete Supply, LLC et al.*, 566 US 478 (2012); *Hewitt v. Comm'r*, 21 F.4th 1336 (11th Cir. 2021); *Good Fortune Shipping SA v. Comm'r*, 897 F.3d 256 (D.C. Dir. 2018); *Green Valley Investors LLC v. Comm'r*, 159 T.C. 80 (2022).

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¹⁶ Order dated July 1, 2024, *FedEx Corporation v. United States*, No. 2:20-cv-02794-SHM-tmp, ECF No. 63 (W.D. Tenn).

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¹⁸ *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944).

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