



**Wood** LLP

# Tax Alert



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# SAC Capital Pleads Guilty With \$1.8B Fine---And How Could It Impact JP Morgan

The [feds struck a deal with SAC Capital](#) and its famous founder [Steve Cohen](#). It calls for SAC Capital Advisors and related entities to plead guilty to criminal insider trading charges and pay \$1.2 billion in new fines and penalties. It already agreed to \$616 million. All tolled, it's the biggest insider-trading settlement ever.

What's more, the entities will close up their investment management business. That's a huge win for prosecutors. Still, with SAC's net returns this year estimated at 13%, the pay can't be all that painful. As noted here, [Cohen Will Probably Earn Enough To Cover SAC's New \\$1.2B Settlement!](#) Indeed, [Forbes estimates](#) that Cohen personally earned \$1.3 billion last year after SAC posted net returns of about 13%.

The \$616 million under SAC's previous settlement about the firm's insider-trading was with the Securities and Exchange Commission ([SEC](#)), but even with the total of \$1.8 billion Mr. Cohen isn't in the poor house. His net worth, [which recently peaked at \\$9.4 billion](#), will remain greater than \$7 billion. But



The headquarters of SAC Capital in Stamford, Connecticut. (Image credit: Getty Images via @daylife)

one thing that's clear in the deal is that the SAC entities agree not to claim a tax deduction for any of the \$1.8 billion. Is that normal?

Not really. There's much talk today about tax provisions but such explicit statements are rare. In this case, the [documents say explicitly](#) that:

“The SAC Entity Defendants further agree that the fine imposed in connection with this case and the forfeiture ordered in connection with the Civil Forfeiture and Money Laundering Action shall both be treated as a penalty paid to the United States government for all purposes, including all tax purposes. The SAC Entity Defendants agree that neither they nor any other person or entity paying all or a portion of the imposed fine or forfeiture shall claim, assert, or apply for a tax deduction or tax credit with regard to any federal, state, or local tax for any fine or forfeiture paid pursuant to this Agreement. The SAC Entity Defendants shall obtain the agreement of any person paying all or a portion of the fine or forfeiture to this provision before accepting such payments to be made on their behalf.”

The documents go on, “[i]t is further understood that the SAC ENTITY DEFENDANTS will not take any deductions on their tax returns, or seek any other tax-related benefit, for any of the financial payments they make....”

Founded by Cohen in 1992, SAC Capital delivered average annual net returns of some 30% over two decades. The wire fraud and securities fraud counts now bring that era to a close. Although Mr. Cohen himself may be untouchable, eight former SAC Capital employees were mentioned in the indictment, six of whom pled guilty to insider trading. The government claims SAC Capital top management ignored “indications that trading recommendations were based on Inside Information.”

Soup to nuts, the government claims SAC Capital shouldn't be in business, and the government has now won. In the [SEC settlement](#), Cohen and his funds admitted no wrongdoing. It previously appeared that the \$616M SEC settlement would be fully deductible. See [SEC's \\$600M Slap To Steve Cohen's SAC Fund Not Bad After Taxes](#).

Could this deal impact JPMorgan Chase? It may not seem possible but it could. The besieged firm already paid more than \$1 billion to resolve U.S. and U.K. queries into its whale trades. Its latest \$5.1 billion settlement seems tax

deductible. See [JP Morgan's \\$5.1 Billion Settlement Is Tax Deductible](#). But a possible admission of guilt has been discussed and is far more touchy than even the \$13 billion figure being floated.

Admissions of guilt would tarnish the bank's public image and foment shareholder litigation. Remediation (as opposed to payments to punish) should mean tax deductions. Paying nondeductible fines and penalties is doubly painful.

Despite their punitive sounding names, some fines and penalties are viewed as remedial (and thus deductible) rather than penal in nature. For that reason, defendants want a settlement agreement to confirm that payments are not penalties and are remedial. The U.S. Public Interest Research Group thinks precluding JPMorgan Chase from claiming tax deductions should be explicit to safeguard taxpayers. The group claims that unless JPMorgan Chase is explicitly forbidden, it will write off the settlement. That would make taxpayers bear 35% of the cost of the settlement.

Tax language in settlement agreements doesn't bind the IRS, but it goes a long way toward avoiding tax disputes. Explicit provisions about taxes may become more common.

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