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Tax Group Of The Year: Mayer Brown

By **Vidya Kauri**

Law360 (February 6, 2018, 2:27 PM EST) -- Mayer Brown LLP's tax practice — a global heavyweight in the transactional and litigation spheres — was a shoo-in for Law360's 2017 Practice Groups of the Year after having successfully defended Eaton Corp. against the IRS' cancellation of two agreements and guided several multibillion-dollar transactions such as a major Canadian bank's expansion in the U.S. and one of last year's largest IPOs.

The firm has more than 100 tax attorneys spread across the U.S., Brazil, Europe and Asia with a substantive depth and breadth to its tax practice that spans both planning and litigation in areas including mergers and acquisitions, capital markets, renewable energy and insurance.

Tax attorneys work collaboratively with other corporate practices, as do the tax controversy and tax transactional units, according to Brian Kittle, co-leader of Mayer Brown's tax controversy & transfer pricing practice.

"When tax planners are working on a transaction, they'll also collaborate with the tax controversy folks in order to assess where the potential risks can be identified by a tax authority in the future," Kittle said.

A notable case that Mayer Brown was involved in as co-counsel in 2017 was Eaton's lawsuit against the Internal Revenue Service challenging the agency's cancellation of two Advance Pricing Agreements — arrangements between taxpayers and tax authorities — that led to an increase in Eaton's taxable income by about $370 million.

U.S. Tax Court Judge Kathleen Kerrigan's 200-page ruling in July was a landmark win for the company and the firm in finding that the IRS had abused its discretion by canceling the APAs.

APAs are binding agreements that should only be cancelled under the IRS' revenue procedures, and the agency should be able to employ "immaterial and inadvertent errors" made by Eaton in calculating its transfer pricing methodology to switch to another one floated during negotiations for the two APAs, Judge Kerrigan said.

Mayer Brown's tax controversy practice benefits "from an enormous" amount of technical expertise within the transaction tax practice, according to Jason Bazar, co-chair of the firm's tax transactions & consulting practice.

"We span cases that run across all the corporate provisions, basically, of the Internal Revenue Code," Bazar said.

Eaton's milepost victory doesn't overshadow the significant deals that Mayer Brown's transactional team was able to chalk up.

The firm's tax group served as lead U.S. tax counsel to Canadian Imperial Bank of Commerce in its $5 billion acquisition of PrivateBancorp Inc. The June 2017 deal was one of the most ambitious U.S. bank acquisitions since the 2008 global financial crisis, and while it had cash considerations, it was structured to be tax-free with regards to CIBC shares that were paid to the sellers, according to Bazar.

"This was a very big strategic move for a long-time client in terms of a big expansion of its business in the United States," he said.

The particular tax-free structure that was chosen in the merger is called a "forward triangular reorganization," Bazar explained, under which the parent company, CIBC, forms a subsidiary to merge with the target company, PrivateBancorp, and the newly formed corporate subsidiary survives the merger.

Although shareholders had their own circumstances, the deal was ultimately structured so that U.S. shareholders and PrivateBancorp could qualify for tax-free treatment with respect to the CIBC shares paid, Bazar said.

Another headline-grabbing transaction for the practice group was the record $1.9 billion IPO on behalf of European telecommunications giant Altice NV.

The offering was the second-largest IPO at the time of its June 2017 debut on the New York Stock Exchange, and it involved getting past complex tax issues related to Altice USA's multinational ownership structure and minority investors to ultimately be able to issue shares to the public without triggering unintended tax consequences.

"What was particularly interesting about it was that the largest shareholder was another public company which had to deal with its own issues as a public company and taking its subsidiary public, and it also had to balance that with the other shareholders in the U.S. company," Bazar said.

Looking ahead into 2018, the firm has a number of important cases it's chipping away at in the U.S. Tax Court, and it expects more deals and litigation work as taxpayers process the implications of the recently passed Tax Cuts And Jobs Act, P.L. 115-97.

The tax cut legislation, which also heralds significant changes to the taxation of multinational businesses, has had Mayer Brown's tax team producing white papers from the time it was introduced to help clients understand significant new issues. The firm has also been hosting seminars and presentations, both in the U.S. and abroad, where clients can ask questions, in addition to conducting internal training to get its partners and associates up-to-speed with changes unravelling in real time.

Joel Williamson, one of the firm's leading litigation partners in Chicago, said that he expects a period of adjustment and potential conflict as America, as well as its major trading partners, begin to assess how the new U.S. tax legislation affects their business structures.

“When you have such a fundamental change in a country’s tax system, especially in a country that’s as important in the world, business-wise, as the United States, there’s going to be a period of adaptation to a new system by other existing systems,” Williamson said. “I would think that there will be a considerable number of years where there will be disputes and controversies and discussions as to how the new U.S. system for taxing corporations works out with the existing systems from other particularly developed countries.”

--Editing by Emily Kokoll.