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Tax Group Of The Year: Mayer Brown

By **Maria Koklanaris**

Law360 (January 16, 2020, 1:16 PM EST) -- Mayer Brown's tax practice earned key victories in 2019, including one for Bank of America over the U.S. Department of Justice in a tax refund battle and another for Fidelity and a coal-refining partner in a fight with the IRS over credits, landing it among **Law360's 2019 Tax Groups of the Year**.

With more than 100 tax professionals in North America, South America, Europe and Asia, the group offers breadth as well as in-depth specialization in areas such as transfer-pricing. In recent years, it has also significantly increased its footprint on state and local tax issues.

In January 2019, Mayer Brown's tax practice notched a big win for Bank of America when a magistrate judge in North Carolina sided with the bank in a dispute with the U.S. government. The federal court denied a bid to transfer Bank of America's $163 million tax interest refund lawsuit to the U.S. Court of Federal Claims, saying it had jurisdiction over the case.

Then at the end of June, the firm picked up another victory when a federal judge, this time in the Western District of North Carolina, upheld the magistrate judge's ruling after the Justice Department asked for a change of venue. That judge said district courts have the authority to hear overpayment interest claims, rejecting arguments to the contrary as "unpersuasive."

The government has appealed to the Federal Circuit, Brian W. Kittle of Mayer Brown told Law360. That potentially sets up a split with the Second Circuit, which ruled in September a district court had no authority to decide a similar overpayment-of-interest case, ruling that whether Pfizer is owed $8.3 million in interest on taxes overpaid to the Internal Revenue Service is a matter for the U.S. Court of Federal Claims.

"We obviously take a contrary position," said Kittle, a co-leader of Mayer Brown's tax controversy and transfer pricing practice.

In the partnership matter involving Fidelity, the Internal Revenue Service had challenged Cross Refined Coal LLC and Fidelity, its partner along with other companies, by denying them refined coal product credits under Section 45(e)(8) of the Internal Revenue Code.

“The question was whether the partnership itself and the partners were ‘bona fide partners,’” Kittle said.

The government argued they were not because they did not have sufficient risk, saying neither a significantly positive or significantly negative development in the business would greatly affect the partners. Meanwhile, Mayer Brown argued successfully that the partners were susceptible to the “normal vagaries” of the business, including being sued for liability if something went wrong.

“They weren’t really owners in the business that was producing the refined coal — that’s what the government was arguing,” Kittle said. “The evidence that we represented showed that the partners took on the actual risks associated with the underlying business.”

Kittle and Mayer Brown also got a surprise when U.S. Tax Court Judge David Gustafson spent more than three hours reading his 70-page opinion from the bench. In the ruling, the judge said that the partnership was legitimate and entitled to claim the refined coal product credits.

“I have been doing this for 14 years and never had a bench opinion before,” Kittle said. “It felt like someone is reading a jury verdict; it’s very surreal.”

Additionally, the tax group worked in 2019 on at least two major matters involving media and telecom entrepreneur Patrick Drahi. In one, they helped Bidfair, owned by Drahi, take private the legendary global fine arts broker Sotheby’s. Mayer Brown served as tax and restructuring counsel for the deal, which also involved other firms.

“That was an exciting deal,” Jason Bazar, a co-leader of Mayer Brown’s tax transactions and consulting practice, told Law360. “We were starting with a clean slate here as to find a way to structure this Swiss resident billionaire’s acquisition of a very old prestigious auction house company. We spent a good part of the year working and planning on a structure that works based on where Patrick is based and where his holdings are.”

Drahi is also the founder of Altice, the giant multinational broadband, telecommunications, media, digital and advertising company. Mayer Brown represented Altice in the sale of a minority stake in the home fiber optic connection business SFT FTTH, a newly formed subsidiary of Altice France. Handled primarily by Laurent Borey, a tax practice leader in the firm’s Paris office and colleagues there, the Altice fiber optic deal was completed in March.

In 2017, Mayer Brown moved to broaden and deepen its work in state and local taxation by bringing in veteran state and local tax attorney Leah Robinson. Last year, she led the firm to a notable win in the New Jersey Tax Court against the New Jersey Division of Taxation.

The court agreed that New Jersey’s imposition of an alternative minimum assessment on a food products company was unconstitutional under the supremacy clause. Mayer Brown argued that the assessment was an attempt to work around the Interstate Income Act, known as P.L. 86-272. Under that federal statute, the company should have been protected from New Jersey’s assessment, Mayer Brown argued.

“Leah was able to win this case for the client on a constitutional basis,” Bazar said. “The court was willing and decided to conclude that basically the tax was a workaround, and the supremacy clause kicked in. They were effectively frustrating the purpose of the federal statute.”

--Editing by Philip Shea.