

Tax Group Of The Year: Cravath

By Vidya Kauri

Law360 (February 2, 2018, 4:56 PM EST) -- Cravath Swaine & Moore LLP was thrust into Law360's Practice Groups of the Year following a successful 2017 guiding headline-grabbing, multibillion-dollar transactions such as Anheuser-Busch InBev's \$123 billion acquisition of SABMiller and Time Warner Inc.'s pending \$108.7 billion sale to AT&T Inc.

With approximately \$650 billion worth of known transactions in the past year, Cravath's ranking is especially well deserved considering the relatively small size of its tax practice, comprised of six active partners in New York, one of counsel and about 20 associates.

"We fit together on a single floor," Stephen Gordon, head of the firm's tax department, said.

What sets Cravath's tax practice apart from others in BigLaw, besides its size, is the high caliber of each partner, as well as the noteworthy talent of associates that partners at other law firms remark on, Gordon said.

He explained that larger firms that have a lot of territory to cover will have outstanding lawyers, but they don't always "need the best and the brightest" for every role. However, the Cravath tax group's primary focus on corporate transactions with clients it builds long-lasting relationships with means that "everyone is uniformly talented," he said.

One client that Cravath has had an abiding relationship with, going back nearly a century, is Time Warner. The firm guided the Time Warner-AT&T sale, and the tax team structured the transaction to permit it to qualify as tax-free once it gets the final go-ahead, according to Lauren Angelilli, one of the tax partners who worked on the deal.

"We worked with our corporate team ... to make sure the transactions did in fact qualify under U.S. tax rules and that the structure we chose was one that did not trigger any other nontax issues for Time Warner or for AT&T," Angelilli said.

The U.S. Department of Justice is currently challenging the sale, alleging that the combined company would have too much leverage over other television distributors and lead to higher prices for consumers.



The tax group's closely integrated collaboration with the rest of Cravath's corporate groups is another contributing aspect of the firm's successes, Gordon said.

"There's not a corporate transaction that happens without us," he said. "I think of tax as the hub inside the corporate wheel, and all the different corporate practices are the spokes in the wheel because there's not a single corporate practice group that we're not involved with."

Another noteworthy transaction the tax practice had to tackle in conjunction with other corporate groups is the purchase of SABMiller, a U.K. brewing and beverage company, by Anheuser-Busch InBev, which is headquartered in Belgium.

The deal raised tricky foreign tax questions since it involved a \$12 billion divestiture of SABMiller's interest in MillerCoors LLC to Molson Coors Brewing Co., and SABMiller had a significant U.S. shareholder, Altria Group Inc., that wanted to roll over its stake into AB InBev in a tax-free manner under U.S. tax rules.

Angelilli explained that the transaction was interesting and challenging because she and her team had to work with foreign law experts and understand what was at play in Belgium and the U.K. to ultimately get the desired U.S. tax treatment, and to get Altria's advisers comfortable with the deal.

"That's why it's so important that we're really integrated with the rest of the corporate team — to make sure that the transaction qualifies in practice, not just in theory, but qualifies in practice for any intended tax treatment," she said.

Tax-free structures can be trickier to achieve in some transactions, as it was in British American Tobacco's \$97 billion merger with Reynolds American Inc., of which it already had a 42.2 percent stake in.

Acquiring the remaining 57.8 percent was an unusual situation, since British American Tobacco, as the dominant shareholder, had fiduciary duties that acquirers don't usually have.

The delicacy of negotiating with a partially owned subsidiary was complicated by a large amount of cash, multiple intermediate subsidiaries and pushing debt down into the U.S. group, which included Reynolds, according to Andrew Needham, one of Cravath's tax partners who played a lead role in the purchase.

Ultimately, it was structured as a taxable transaction, and that had the effect of simplifying the tax issues in the deal, Needham said.

"The reason that's where we landed is, even in a deal that's tax-free with respect to the stock, if the cash consideration represents a large percentage of the total deal, many of the shareholders will pay tax on most and, in some cases, all of their gain," he said. "They don't pay tax in the transaction but when they sell the BAT shares, they'll have additional capital gain."

The Cravath tax team's primary focus on transactions means that it doesn't take on outside controversy work with new clients, Gordon said.

"It's part of our larger strategy of making sure that we reserve our tax resources for the firm's clients and not for individual, one-off clients. It's part of the way we build our relationships with our clients by

providing for them," he said.

Any tax controversies that arise with existing clients have typically been dealt with on the administrative level with the Internal Revenue Service, with these issues rarely going to trial, he added.

The culture within Cravath's tax team is handed down to incoming associates through an extensive in-house training curriculum with a library of about 30 different programs.

Cravath was among the first law firms to be certified in New York state in the late 1990s as a continuing legal education provider, and promotions almost exclusively take place from within, the firm said.

Learning also takes place during the more informal discussions that associates and partners have with one another over various legal issues, as associates rotate between different partner groups and learn to work with clients at different phases of transactions, Angelilli said.

She added, "I think that some of the most important training that happens is when we're sitting together in our conference rooms and in and out of each other's offices."

--Editing by Catherine Sum.

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