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Tax Group Of The Year: Cravath

By **Paul Williams**

Law360 (January 24, 2024, 2:03 PM EST) -- Cravath Swaine & Moore LLP attorneys provided tax advice to Johnson & Johnson on a landmark $41 billion spinoff of its consumer health business to Kenvue Inc. that led to a $4.37 billion initial public offering, earning the firm a spot among Law360's 2023 Tax Groups of the Year.

The firm advised J&J throughout the transaction, starting when the company began a strategic review years ago, which resulted in the largest carveout IPO in more than 20 years. Part of that process involved obtaining a private letter ruling from the Internal Revenue Service that confirmed the transaction could be tax-free for the company and shareholders for U.S. tax purposes.

The transaction closed in August and showcased the acumen Cravath's tax department has in negotiating varying tax rules for cross-border deals, as the spinoff structure had to meet tax objectives for more than 100 global jurisdictions, according to the firm.

Cravath has advised J&J on prior deals, and the relationships the firm has fostered with the company over the years made it especially gratifying to help it secure such a large spinoff, J. Leonard Teti II, a partner who worked on the transaction, said. Kenvue's brands include Band-Aid, Listerine and Tylenol.

"It meant a lot that they came to Cravath and that I had the opportunity personally to work with them on this transformational deal," Teti said.

While the J&J deal was ongoing, Cravath also served as U.S. tax counsel to Novartis AG in connection with the company's $11.4 billion spinoff of its generics and biosimilars business Sandoz AG.

The Novartis deal closed in October after states dropped an antitrust challenge. Simultaneously working on transactions of that scope was challenging, especially with Sandoz being headquartered in Switzerland, because that necessitated navigating that country's tax laws, Teti said.

"The added challenge and rewarding part of a transaction like that is you're aligning with other professionals in other jurisdictions and making sure that the agreements and the disclosure documents are all matched up well to account for the tax status in those jurisdictions," he said.

Sprawling transactions such as those showcase Cravath's broad reach and the firm's ability to build relationships with attorneys overseas to "thread the needle between the U.S. tax rules and the U.S. legal rules and those in other countries," Lauren Angelilli, head of the firm's tax department, said.

Recent shifts in the U.S. and international tax codes, including the corporate alternative minimum tax in the Inflation Reduction Act and the global minimum tax agreement known as Pillar Two that more than 50 foreign jurisdictions have taken steps to implement, touch on spinoffs in various ways, according to Angelilli.

The taxes are structured differently, as the U.S. tax is based on book income whereas Pillar Two is gauged by a corporate group's effective tax rate on a country-by-country basis.

The minimum tax under Pillar Two began rolling out on Jan. 1, and some companies were already looking ahead last year and considering what the consequences of that tax would be on financing for acquisitions, Angelilli said. A company's financial statement can also affect tax calculations under the U.S. alternative minimum tax, she added.

"It's a complicated landscape out there, and it's shifting," she said.

Also on the domestic front, enhancements to clean energy tax credits under the IRA are playing a role in Brookfield Renewable's pending $2.8 billion acquisition of Duke Energy Renewables LLC. Cravath is advising Brookfield on tax matters for the transaction, which was announced in June.

The IRA increased and expanded certain clean energy tax credits and created transferability and direct pay methods for monetizing them, and Cravath analyzed how those credits could be maximized under the Brookfield transaction. Speaking more broadly about the IRA, Angelilli said the law altered the credits in a way that spurred the industry to take action and realize their benefits in ways that weren't previously available.

"We're seeing a market develop around the sale of direct energy credits and some interesting new structures that allow the developers of renewable projects to monetize the credits," she said. "Tax shapes and responds to policy. And when there are changes that are made, they are often very complex and layered on top of existing rules. Our job is to master them and help clients navigate through them. It's one of the things that I love about the job."

Cravath has offices in New York, Washington, D.C., and London. Its tax department has nearly 30 lawyers, including six partners, making it a smaller practice than the firm's corporate and litigation practices. Nonetheless, the tax department is one of Cravath's core units and has played a key role in building the firm's stellar reputation of steering some of the largest merger and acquisition transactions in history.

"As a firm, we are able to punch above our weight," Teti said. "We function as a global law firm, working on the largest transactions across the globe, even though our footprint in terms of actual offices is much smaller than other firms that do that."

--Editing by Janice Carter Brown.