On Tax—Darren Heil of JPMorgan

Len Teti: Welcome to On Tax—A Cravath Podcast. I'm Len Teti, a partner in the Tax Department of Cravath, Swaine & Moore, a premier U.S. law firm based in New York City. On each episode of On Tax, I talk to professionals in the Cravath network about their life and work in the world of tax. We focus on the human side of tax law, highlighting the people, connections and stories that make the space such a fascinating and dynamic area of practice. I hope you enjoy this episode.

Today I'm joined by Darren Heil, who's a Managing Director at the Investment Bank at JPMorgan. Darren, welcome to the podcast and thanks for joining us.

Darren Heil: Thanks for having me.

Len: So, Darren, I want to talk to you about how you came to the tax world. I know that you've been in the tax world for a long time, but you came to it in a sort of an unusual way. Will you talk to us about that?

Darren: Sure. I went to law school at Georgetown with no thought about tax, not even really knowing what it was. While I was there—I think it was in my second year—somebody said to me, "If you're going to go to law school at Georgetown, you have to take Ginsburg's tax class. Everybody has to take Ginsburg's tax class." I'm like, "OK, fine. I'll take Ginsburg's tax class." He was absolutely fabulous, as you might imagine, just the most intelligent, well-read, witty, interesting guy I had ever met. And he made tax seem so incredibly fascinating. And I loved the class. I took two of the classes. I did pretty well, and I thought, "Well, maybe I might be actually good at this." But I didn't really know what a tax career was. And when it came time to doing the summer associate thing, I went into what I knew, or thought I did, which was litigation, and ended up going into the Litigation Department at Cravath because that's what I knew. And so I was in that department for two years. It's an incredible department with really talented people.

I did that for about two years and I finally decided that I'd had enough. So I went to the partner I worked with and said, "Look, I don't think this career is for me, so I'm going to leave. But if you'd be willing to give me a shot at your Tax Department, I'd be very interested in that because I really liked tax when I took it in law school, and I think I might like doing it here. I'm not sure, but I'd like to give it a shot, if you're willing to." And she said, "Well, let me go talk to somebody at the department and I'll see." And she came back and said, "Yeah, they'll take you."

Len: So, as a summer associate, you hadn't split the summer and worked in the tax group at all. Did you know any of the tax lawyers at Cravath at that point?

Darren: Well, I should have mentioned I didn't actually summer at Cravath. I summered at Sidley Austin. I had a great experience there, also in litigation by the way, and not in tax.

Len: So no tax.

Darren: But then, during my third year, I figured I'd throw my hat back in the ring and see if I could get into a place like Cravath and got lucky. So I had no experience with the department. Lew, after he brought me in, said, "You know, you just got really lucky. We had an opening and we didn't know how to fill it. So we grabbed you. The people in litigation liked you, so we figured, you know, we'd give it a shot."

Len: This is Lew Steinberg, one of the former Cravath tax partners.

Darren: Yeah.

Len: So you spoke to Lew and you moved over to the Tax Department. And for those who don't know, at Cravath, the Tax Department all sits on one floor. So presumably you moved offices from where you were in the litigation floors and you moved down to a tax floor.

Darren: That's right.

Len: Now, you're a second-year, almost third-year associate at Cravath, and it's day one for you as a tax associate. What was that like?

Darren: It was terrifying. I had absolutely no idea what I was doing—zero idea what I was doing. Immediately, I was handed three credit agreements, two securities offerings and an M&A deal. There was help on the M&A deal, but it wasn't like on the credit agreement somebody was standing holding my hand saying, "Okay, now do this. Now do this." It was more like, "If you have any questions, come talk to us." Thankfully my officemate was very nice and sort of took me under his wing a little bit and said, "Here I'll help you do this." Because I had no idea what was going on.

But I was motivated and I started reading the code, everything I could get my hands on. The learning curve is pretty steep, especially when you've got really smart people around you. So it worked out OK.

Len: Whatever feelings you had over those first two years in litigation—sort of gnawing feelings about how "I don't really like this work" and "This doesn't really seem like something I want to spend the rest of my legal career doing"—you must not have been having those feelings in the tax group. So do you remember when you started to get more comfortable with the subject area choice and with the sorts of tasks you were doing, notwithstanding how terrifying it was from time to time?

Darren: I kind of asked people, "What do I need to know to be good at this? What do I need to understand to be good at negotiating credit agreements? What are the important issues?" People would point to them, and I'd read up on them. And, "What do you need to understand to be able to negotiate effectively, you know, a securities disclosure?" People would point to me read this disclosure, read that.

I had a vision of what I needed to do to get better at it, and I just plowed my way into that. I suppose within the six- to 12-month timeframe, I started feeling much better about at least those two aspects. The M&A stuff depends on the type of deal, but over time I started to get better at that too. It was a combination of being motivated and really wanting to learn the stuff and putting in the work. And also just having some really smart people around me who were willing to help me out.

The culture of the group was so great. I mean, that's why I loved it. We're a team in the Tax Department. I felt like people were there to help me, and it was a good feeling.

Len: I remember meeting you, probably when I was a summer associate, which would have been the summer of 2004. Certainly by the time I was a permanent associate in 2005, I remember working with you on things. And at that point you must have been in the department for a couple of years.

Darren: Right.

Len: You had a lot of confidence and a lot of know-how. I remember looking at you and the other senior associates and thinking, "Am I really going to be able to function like that in a couple of years' time?" And, as you say, the process of working on the team and taking notes really about how other people are approaching their tasks, not just the law, but the tasks of lawyering, gave me a lot of confidence about what my own future might look like. But on day one, it certainly doesn't seem possible.

Darren: Right. Yeah. I had the same feeling. But like I said, it was such a great group, especially the senior associates who were there. Everybody was just really nice and willing to help, even though they were seniors and were very, very busy and probably didn't have the time to help a junior like me, but they did.

Len: And then something happened in the tax associate universe, not just at Cravath, but at a couple of firms in the mid-2000s. By the time I was a second- or a third-year associate, this is before 2008.

Darren: Right.

Len: The senior associates had been hired by the investment banks. People had left to take on pretty exciting roles at the investment banks, and you were among them. Before we talk about your individual decision to leave, what was your sense at the time about what was going on in the marketplace for mid-level experienced tax associates?

Darren: Well, I think first of all, the investment banks were really, really building out their M&A capabilities, and they discovered the value of that role. That role was pioneered. I guess the originals would have been Ivan Ross at Goldman, and then Richard Casavechia. You know those names. I'm sure you do.

Len: Sure, of course.

Darren: At JPMorgan, in Richard's case, he was in the tax department working for in-house tax, and people from the M&A group kept coming to him with questions, and he sort of became their guy. And so other banks started hiring too. And then it just became a role that most investment banks wanted to fill. And, in some cases, it became like a group that some investment banks built out.

Len: And so in building out these tax groups, as the story kind of made its way to me—again, I was a little behind this wave—but the way to source tax talent was to go to the top law firms and identify high-performing mid-level tax associates who had been trained at those firms and working on those firms' deals and complicated spinoffs and reverse Morris trusts, as you say, and then hire them.

Darren: Yup.

Len: And that's essentially what happened to you and two or three of the mid-level associates who were there when I started. Can you talk about how that process happened to you? How did you become aware of these kinds of opportunities, and what were the things going through your mind as you thought about leaving the Firm and doing this instead?

Darren: Well, in my time in the group—it was probably about five years—I must've seen at least five or six people leave, including Lew Steinberg, who was head or co-head of our group at the time, which was a huge move.

Len: Right.

Darren: I remained friends with everybody, and I'd talked to them: "So how is it? How's it going over there?" They'd say, "Oh, it's great. You'd love it." So I was interested. Then at some point, Ben Bernstein, who was at Bear Stearns at the time, his person he had working for him, Brett Eisenman, also an ex-Cravath guy—

Len: Right.

Darren: —had left to go to Goldman. He had a hole to fill. He ran into Will Dixon at some event. He said, "Will, I want to hire somebody." And he said, "Oh, you got to go get Darren." So he called me and that was that. I loved the job.

It also seemed, from a career perspective, like a really interesting thing to do and would offer optionality in terms of, moving from, if you want to stay in the tax and structuring thing you could, but there was opportunities to go into M&A, other areas, and a lot of actually the colleagues that left did exactly that—they sort of moved on to other things. So it seemed like a good move, although I certainly had sadness leaving the Cravath Tax Department for sure.

Len: And then, I don't remember exactly when you left, but I do remember that you left to go to Bear Stearns in Ben's group. And then, of course, 2008 did happen.

Darren: Yeah.

Len: And Bear Stearns was sort of subsumed into JPMorgan. Before you tell us a little bit about kind of what your tasks were at those banks after you made the move out of Cravath, tell us what that experience was like in 2008, when things were just shifting so quickly in the marketplace, and particularly the investment banking marketplace. How did you ride that out?

Darren: Well, it's funny. I remember I left in the summer of 2007. I remember sitting in Ben's office the day I signed the agreement. It was in the middle of summer. And you know how in an investment bank there's a big open, floor offices around the perimeter, big sort of open-area bullpen in the middle? And then an interesting feature of investment banks' floors is there are TVs on the walls everywhere. They're usually with business news on of some sort.

But anyway, they were flashing up on the screen that this Bear Stearns hedge fund is basically going bankrupt. It invested in mortgage-backed securities and all these things. And it was just this big news. It was a multibillion-dollar hedge fund going down.

Len: While you're signing your agreement this is happening?

Darren: While I'm signing my agreement. I turned to Ben, I go, "This, you know, this mortgage-backed security hedge fund, I guess it's not a big deal." Ben's like, "Oh, it's noise. Don't worry about it. It's noise." Well, obviously it turned out not to be noise, but I was there from August until it imploded, which was March of the next year. So it wasn't very long.

When it actually happened, it happened pretty quickly over the course of a couple of months. Everybody started to realize, "Oh, wait, we've got a problem here." Until that fateful weekend when we basically went under and JPMorgan took us over. From my perspective, there wasn't much of a financial impact to me. I didn't have much exposure to the firm other than the fact that I worked there, but for the people that worked there, it was devastating.

Most investment banks pay their employees in stock to a significant extent. It vests after a couple of years and you can sell it if you want, but at Bear Stearns, nobody ever sold their shares, right? You never sell a Bear Stearns share. So these people had accumulated, for experienced bankers, millions and millions of dollars' worth of shares, but they wouldn't sell them. And when the stock cratered to two bucks, it was just absolutely devastating for all these people. They lost everything. And you could just see that what was going on, on the floor. Everybody was very, very, very stressed out and concerned, as you might imagine.

Len: I know it took a while for things to stabilize, but what kind of tasks were you doing—tax tasks—in that kind of M&A advisory role that differed from the tasks you were doing back at the Cravath law firm? And in particular, as you think back on it, what about your law firm experience prepared you well for that role? But also what did you find yourself unprepared to do? What was your reaction as you started doing that type of work?

Darren: My Cravath experience gave me this big knowledge base, but I hadn't really been asked to apply it in the same way that I was being asked to at the bank. At the bank, people come to you, they know nothing about tax. They come to you with an idea. I mean, I would say at the bank, at least half of what I do is—and it's still as true—is pitching. So you're not executing, you're going to your clients trying to get them interested in an idea, or maybe they're asking you to come to them with ideas, but in any event, you're trying to create an idea they might find interesting. And so that was something completely new for me, because I didn't do any pitching at Cravath.

Bankers would come to you and go, "OK, here's the situation: this company is trading two turns multiple below where they should. They've got this one business that's lagging, they've got this other business performing really well. What can we do for them?" And so I'd have to start thinking through, "OK, what works from a tax perspective? Could they do a spin? Could they do a merger and jettison some businesses?" Or maybe some of these businesses have high bases. I would dig through their 10-K. I'd look to see if any of them had been acquired. Try to reverse engineer their basis from there for tax liability.

So all this type of stuff I had never really done before. But the knowledge base I had gotten in the Cravath Tax Department prepared me for it. So I knew the sort of issues to think about. I just hadn't really applied them in that fashion yet. And I really enjoyed it, to be honest. I thought, "Oh, this is cool." People are coming to me looking for ideas. So I can be kind of creative.

Len: I've experienced myself that there's a lot of different consumers of tax advice. In a law firm, the consumers could be the corporate lawyers internally, could be the tax partner you're working with, could be the tax director at the client you're working for, could be the CFO, the CEO, the board of directors too, but there's a lot of potential consumers. And I gather from a banker's perspective, you have all those consumers and all sorts of internal consumers. I wonder, what do you think the most effective tax advisers do well?

Darren: I think there's a couple of things. One is they explain complicated tax concepts to non-tax people effectively in layman's terms. And there's an art to that. It's a skillset that I think most of us develop over time because you have to. I'm sure in your role more than mine, you have a lot of times when you're communicating with other tax people and you don't really have to explain what you're talking about—the policy underpinnings of the rule that you're citing—to make them understand it. But oftentimes, you are in front of a room of people who, maybe there's one person in that room who knows tax, and if you start just randomly citing a code provision or just saying, "You can't do that because of tax," that's not a particularly satisfying answer for the room. And they get confused and can get frustrated. And so the really good tax advisers can give an explanation that's sort of crisp and understandable to the non-tax person. So I think that's one thing.

I think the other thing, especially when it comes to M&A, is a really good, effective tax person understands the business deal, and they understand that they're not operating in a vacuum and that any solution they try to come up with that solves a tax problem could create an economic issue. And so you have to understand how it all factors in. I think the really good tax lawyers get that. I think they get it because it's an interesting part of the deal, and they want to understand it. But what do you think, Len?

Len: I agree with you on both of those points. And the communication point itself is, I think, critical. We train our associates to do that, as you know. Sometimes you need to first recognize that this thing is happening around you, that this skill is actually being applied around you. When you're a first-year associate and you've stayed up late researching an area of the law and you've given the tax partner the answer, and you've talked to them about it, and then the tax partner gets on the phone and says something that kind of sounds different to the client.

Darren: Yeah.

Len: You might say, "Well, wait, we just spent 45 minutes talking about this, and that's not what we talked about at all. We said that differently." And the answer is the tax partner may be calibrating who the client is at that particular moment in time and how the advice is being consumed. Honestly, it takes a couple of experiences like that, I think, for a junior lawyer, somebody who's just starting out in that kind of professional environment, to even understand that that thing is happening. And after you see it and you say, "Wow, that was really interesting. I'm not sure I would have said it quite that way. Why did that person say it that way?" Then you can start practicing yourself. And I remember going back to my officemates and saying, "Hey, let me see. I got to get on the phone to explain this to somebody. Let me explain this to you in kind of layman's terms and see if this makes sense. What do you think?"

Darren: That's right.

Len: But those are two different things—understanding that something is happening and then practicing that something. So I definitely agree with you.

Darren, in the last few years, obviously the tax world has changed a lot. There's been a dramatic tax reform bill in late 2017. What's changed about your role in the past few years, either because of the law changes or something else that's changing in the marketplace?

Darren: I think what we all do is honorable work, and I'm proud of my job and what I do. At most points over the last 15 years, there was always sort of one aspect of my job that I didn't completely feel great about. When I first started, it was all these partnership monetization structures that were part and parcel of what we were supposed to show, you know, leveraged partnerships and things with preferreds and loans against preferreds, all basically sort of ways to try to sell an asset for cash and get tax deferral.

And everybody talked about it. You were expected to go talk about it. Clients wanted to hear about it. So you had to talk about it. But I would always sort of couch it, "There's a lot of risks with this."

And then we kind of moved away from that. And then the flavor of the month that replaced that was probably inversions.

Len: Right.

Darren: And there was a period of time where I probably spent 50% of my time talking about inversions with people. And everybody was running around showing, "Here are five small-sized, Irish-domiciled companies that you could conceivably give 20% of your stock to, to move off shore."

And then the last one was the sort of repatriation craze. There was a period of time in the lead-up to tax reform where a lot of deals, particularly cross-border deals, had some sort of repatriation play component to it. And clients were very, very interested in that. But now it feels like we're at a point where there's none of that, and I don't know if it's because of tax reform, because of some of the changes in the inversion rules.

I feel like we're at a point right now where there's really nothing going on in any kind of major way that I feel uncomfortable with. And I like that. I don't know how you feel about that. But, for me, that was always sort of something that gnawed at me.

Len: Well, certainly one of the stated purposes of the tax reform bill in 2017 was to reduce the incentives to keep cash off shore—

Darren: Right.

Len: —to reduce the incentives to move off shore, and there's all sorts of features of the bill that did that. One of the things we have found in our practice is that it flattened the learning curve a little bit in the sense that so many of these new rules were new for everybody.

Darren: Right.

Len: And so first- and second-year associates who had little background or experience in tax could become as expert, or more expert, on a given area of the law than partners who had been doing it for 30 or 35 years.

Darren: That's certainly true.

Len: That's a good thing for young lawyers to experience, because as you said, so much of being a young lawyer at a big law firm is the sort of terror of, "Oh my gosh, I'm faking it, and nobody knows that I don't know what I'm doing until after six or 12 months." I've heard partners here who were practicing when the 1986 Tax Reform Act came out about that sort of experience, but it was never really real to me. And I was already a partner by the time this tax reform bill came out.

Darren: Right.

Len: So it hasn't been real to me in quite the same way, except of course I'm learning on the fly. But for the junior associates who were in the Firm back then, it really gave them an opportunity to sort of learn tax, or a lot of tax, on a relatively blank slate. And I think that's given them a lot of confidence that's come slower to others.

Darren: Yeah. I can see that. They can feel like they're as expert in GILTI as you are. Maybe they're not, but they could feel like they have a chance to know as much as you do. I could see that being very invigorating.

Len: Do you see any particular trends in the future? I mean, obviously there's new priorities. There's a pandemic that's putting pressure on economic policy. What are your clients asking you and what are you seeing around the corner for people on the tax front?

Darren: The only thing I see these days, Len, are SPACs. SPACs, SPACs and more SPACs.

Len: Though who knows what next week will bring? But in any case, yes.

Darren: We joke I can't have a meeting these days without talking about SPACs. Not that it's a key focus of mine. There are people in our group who are focused exclusively on it right now. It's really just another way to go public. It's just an alternative to an IPO. And a lot of people don't realize that. They think it's an M&A product. It's not. It's an equity capital markets product. But in any event, in terms of tax, it feels like the most interesting developments right now for me are in the spin-off world.

And part of what makes that possible is the IRS's sort of change in ruling policy over the last couple of years, where they're now willing to allow taxpayers to prove overlap or establish overlap prior to close based on public filings. And that's not something they were giving before. But now that they've opened up this opportunity, I think you might see more deals with this type of construct. We do actually a lot of overlap analysis in our practice. I thought that was a fascinating development.

Len: It helps when the agency in charge of tax, the IRS in this case, is responsive to the taxpayers bringing to them legitimate business reasons why a transaction can't be accomplished this particular way that, for years, the IRS has insisted that nobody could achieve and instead needs to have some flexibility built into it. And, as you say, in the spin-off space, first of all, it's incredibly important for taxpayers because a tax-free spin-off is the only way an asset can get out of a corporation without tax being triggered. And the IRS has a pretty strict policy about how they will issue private rulings to particular taxpayers that essentially bless a given spin-off structure. But spin-offs themselves are so unique—each one is unique from another—that there's all sorts of subjective business considerations that the IRS needs to hear. And the fact that the IRS has become increasingly open to hearing those things is all to the good, both from the perspective of our clients and the results they're seeking to achieve. But also just in terms of tax administration generally—a group of taxpayers and advisers dealing with a massive government agency—it's all to the good.

Darren: I agree. Very positive development.

Len: So, Darren, in the few minutes we have left, I wondered if we could talk about something other than tax, like what you like to do in your spare time when you're not working.

Darren: So, as you know, Len, I love to ski. We have a place in Vermont. We go there every weekend, pretty much from Thanksgiving until Easter, or close to it. Assuming the conditions hold, it's great. I didn't start skiing until I was in my 30s, but once I started doing it, I absolutely loved it. And my kids have been doing it since they were four.

Len: Wow.

Darren: They are competitive mogul skiers, and it's been great. I don't know about you, but we like going up there in the summer too. I love the summer up in the mountains. I think it's wonderful. Weather is cool. And there's mountain biking now. That's a big thing—you ever tried that? That's terrific.

Len: Our mountain has a lot of mountain biking, but I've never tried it.

Darren: Yes. It's a lot of fun. It's a little scary the first time you do it, but you figure it out pretty quickly.

Len: And I recall you're an avid golfer too.

Darren: We have played golf before. Yes. I love golf.

Len: You're a very good golfer also.

Darren: I don't know about that. I've been playing golf since I was a kid—love it. I probably try to play 30, 40 times a year if I can. Don't tell my boss.

It's funny. Actually golf has never been more popular. The pandemic was incredible for golf, right? Because it's one of the few things you could do over the summer where you could actually socialize and do something active.

Len: Outdoors and away from people.

Darren: Yeah. All golf courses were booked beyond normal capacity, and it's pretty impressive. You know, I got two kids, far fewer than you, so it's a little easier on me.

Len: Yes, you can do a foursome. I need a couple of foursomes and a couple of carts.

Darren: That's true.

Len: Well, Darren, it's been a pleasure to have you here on the podcast. It's really exciting to catch up and hear about how you've been doing. And we appreciate the time you spent. Thank you.

Darren: Thanks for having me, Len. It was great.

Len: That's all for Season 2 of On Tax—A Cravath Podcast. Look out for Season 3 in the spring of 2022, where we will talk to more folks in the Cravath network and learn more about the people, connections and stories that make the tax practice such an exciting space.

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