Portfolio Media. Inc. | 111 West 19th Street, 5th Floor | New York, NY 10011 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Tax Group Of The Year: Cravath

By **Joshua Rosenberg**

Law360 (January 15, 2019, 5:51 PM EST) -- Cravath Swaine & Moore LLP's tax division had a banner year in 2018. From advising the Walt Disney Co. regarding its acquisition of 21st Century Fox to providing the Linde Group with advice on its merger with Praxair, Cravath found itself on the front lines of some of the year's most important tax-related transactions.

Cravath punches above its weight class, given its relatively small size. The firm has six partners, 15 associates, one of counsel and one senior attorney.

As announced in December 2017, Cravath began advising Disney on its $85 billion Morris Trust-style acquisition of Fox — a technique whereby some assets of a parent company are transferred to subsidiary, which is later merged with an outside party. That spinoff will create "New Fox."

"With the reduction of corporate tax rates following the passage of tax reform, we may see more spinoffs that are taxable in whole or in part," Lauren Angelilli, co-head of Cravath's tax department, told Law360 by email. "This transaction may provide a model for how to address the issues that can arise in those transactions."

Unlike the lion's share of Morris Trusts, which are designed to be completely tax-free, the Disney and Fox spinoff will instead be a taxable event, which Disney will eventually inherit. Further complicating the nature of this transaction is the Tax Cuts and Jobs Act — the first comprehensive tax reform legislation in over 30 years — which became law right after the deal was signed.

"We were able to address this uncertainty by providing that the amount of consideration payable to Fox shareholders would be adjusted for the amount of the spin tax and certain other tax costs, as determined using a dynamic model," Angelilli said.

In an interesting turn of events, Comcast made an all-cash bid for Fox six months after the New Fox merger with Disney was signed. Instead of getting outbid, Disney decided to include cash consideration options, in addition to stock, for Fox's shareholders. The company also increased its original bid.

In today's world of global tax-planning, Cravath's role in structuring a merger between U.S. and German-based industrial gas companies, which were then incorporated in the United Kingdom and Ireland, still manages to stand out for its complexity.

Cravath advised the Linde Group, a German-based company, in its $70 billion merger with Praxair Inc., a U.S.-based firm. That deal closed in October.

The establishment of strong positions in all markets, approximately $1.2 billion in annual savings and a combined revenue stream of about $29 billion based on 2016 figures were all key reasons for doing the deal, according to U.S. Securities and Exchange Commission filings.

"There are several reasons that combinations of German and U.S. equals have been historically uncommon, including legal and tax factors and different cultural views about the role of [mergers and acquisitions] in corporate management," Cravath partner J. Leonard Teti II told Law360. "To ensure a tax-efficient structure for the new holding company, we had to coordinate both corporate and tax laws in the U.S., Germany, Ireland and the U.K."

The deal was called off in September, but both sides were able to come to terms later in the year.

"The two companies undertook an exhaustive review of the various considerations and options, and after that review it decided that incorporating under Irish law and being a U.K. tax resident was the best available alternative among the choices," Teti said.

Under the terms of the deal, Linde shareholders will receive 1.54 shares in the new holding company for each Linde share, and Praxair shareholders will receive one share in the new holding company for each Praxair share.

Linde and Praxair shareholders will both own approximately 50 percent of the combined company, assuming all shares are exchanged in the offer. The new company will be governed by a 12-member board of directors with equal representation from Linde and Praxair, according to the statement.

Yet another notable accomplishment for Cravath was its role in guiding Brunswick Corp.'s $910 million acquisition of Power Products LLC's global marine and mobile business, which closed in August.

According to Brunswick's announcement at the time, the unit includes businesses involved in marine, mobile, industrial power and specialty vehicle aftermarket products. Power Products' so-called electrical construction and maintenance business, Brunswick added, will not be part of the deal.

"The carveout of the global marine and mobile business was particularly complex, and required us to integrate the new business into Brunswick's largest division — the Mercury Marine division — in a tax-efficient manner," Cravath partner Christopher K. Fargo told Law360.

--Additional reporting by Taylor Arluck, Adam Rhodes and Vidya Kauri. Editing by Marygrace Murphy.