



2019 PRACTICE GROUP OF THE YEAR

Tax

Kirkland & Ellis LLP's tax group has innovated novel approaches to headline-grabbing mergers and acquisitions — including Bristol-Myers Squibb's \$90 billion deal to buy Celgene, the largest M&A transaction in 2019 — placing the firm among *Law360's* Practice Groups of the Year.

Guided by Kirkland, Bristol-Myers Squibb Co.'s acquisition of Celgene Corp. didn't stand out solely because of its enterprise value of \$90 billion. The deal, which the companies announced last January, was also notable for its novel structure that minimized the income tax liability associated with migrating Celgene debt to Bristol-Myers Squibb debt.

[Dean Shulman](#), a tax partner in Kirkland's New York office, credited the firm's success with corporate transactions to collaboration between different practice areas.

"The tax department represents approximately 5% of the firm's lawyers, but we're involved in 100% of the firm's transactional matters," he said. "We know how to work as a team with our colleagues across offices and across practices."

Kirkland's tax group has more than doubled over the last five years by bringing on specialists through key market expansion — including in Houston, Boston, Palo Alto and Los Angeles, according to the firm. The tax team has grown to 128 attorneys out of the firm's 2,775 practitioners.

The growth strategy appears to have paid off, as evidenced in part by Kirkland's tax innovations for major deals, including several in the pharmaceutical industry.

The terms of Bristol-Myers Squibb's cash-and-stock acquisition of Celgene called for each Celgene share to be swapped for one Bristol-Myers Squibb share, \$50 in cash and one tradable contingent value right tied to future regulatory milestones.

The tax group at Kirkland developed a novel approach "that essentially gave us a toggle as to a couple

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of different ways to structure that exchange transaction in connection with a Celgene debt holder becoming a Bristol-Myers debt holder,” Shulman said.

He added, “We came up with a menu of options so the way that the transaction occurred would minimize any income tax hit.”

In another noteworthy transaction, Kirkland advised the U.K.-based, global pharmaceutical company GlaxoSmithKline PLC in its joint venture with Pfizer Inc. to bring together their consumer health businesses. The companies’ joined businesses — which feature well-known brands like GSK’s Sensodyne toothpaste and Pfizer’s Advil pain reliever — have a combined £9.8 billion (\$12.4 billion) in sales.

Unveiled in December 2018, GSK’s joint venture with New York-based Pfizer includes plans to create a new company. Working on the joint venture involved complicated negotiations to combine the two companies’ businesses in addition to future exit transactions, including how the new consumer health care business will unwind in the future, according to Shulman.

“Some things have been done like this, but it’s definitely novel

as more of a corner case type structure than your typical buyer and seller structure,” he said.

In another major M&A transaction in the pharmaceutical industry, Kirkland advised AbbVie Inc. on the tax aspects of a cash-and-stock deal for Ireland-based Allergan PLC with a \$63 billion equity value, a deal the companies announced in June.

In addition to advising companies on billion-dollar M&A transactions, Kirkland provided tax counsel to Toys R Us Inc. after the global retail giant hit bankruptcy in 2017 with more than \$5 billion in debt.

A Virginia bankruptcy judge in November 2018 approved a Chapter 11 plan to facilitate the wind-down of the company, putting in place a means for the iconic brand to survive in a limited form and its creditors to receive some means of recovery.

Kirkland’s tax team ensured that employees also saw recovery in form of severance payments. The practice group worked to make sure that severance and other payments could be as large on an after-tax basis as they could make them, according to [Todd Maynes](#), a tax partner in the firm’s Chicago office.

“It’s always a tragedy when a lot of people lose their jobs,” he said. “We worked a lot with different parties and stakeholders to find a way to ensure payments to employees and former employees were as large as possible.”

Kirkland’s reach extends beyond bankruptcy and M&A to private equity, including the firm’s work as lead tax counsel for Bain Capital. In one recent notable transaction, Kirkland represented Bain Capital on a \$2 billion acquisition of global business software company Rocket Software, announced on October 2018.

Shulman said Kirkland’s tax group views itself as part of the firm’s broader transactional teams — including the M&A team, fund formation team, restructuring team and real estate team.

“We don’t think there’s any tax practice out there that’s as seamlessly integrated into their transactional practices like we are,” he said.

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