



2016 Practice Group of the Year

Tax

Kirkland & Ellis LLP's tax team powered through billions of dollars in major mergers and acquisitions last year in sectors including energy, software, medicine and more, providing solid and sometimes novel tax advice that earned it recognition as one of *Law360's* Practice Groups of the Year.

Between October 2015 and October 2016, members of Kirkland's 74-attorney tax practice advised defunct Energy Future Holdings Corp. on a first-of-its-kind tax-free spinoff, helped shepherd the creation of one of the largest rare diseases platforms in the world and handled a complex international software transaction, among other major work.

worldwide, with work that's spread across a relatively small team of tax lawyers who have "tremendous synergy" with the firm's M&A attorneys.

One of the largest of those deals that Shulman worked on was Shire PLC's \$32 billion purchase of U.S. biotech Baxalta, a dramatic step in the Irish pharmaceutical

The situation was an unusual one, Shulman said, noting that Shire had originally pursued a hostile takeover only for the merger, announced in January 2016, to become a "friendly, negotiated deal." The recent spinoff made for complex negotiations and structuring to ensure a positive tax outcome and value for Baxalta's shareholders, he said.

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"If you look at the deal volume and you look at the variety of the transactions, it's kind of unmatched," senior tax partner Dean S. Shulman said. "We've kind of got the full suite of transactional tax trend stuff covered."

Based on both deal count and volume, Shulman pegged Kirkland at No. 1 in the United States and close to that

giant's aggressive push to build out its rare disease platform. The merger yielded the world's largest such platform in both revenue and pipeline depth, according to the firm. Shulman and his Kirkland team represented Baxalta, which had just gone through a tax-free spinoff from Baxter International Inc.

Kirkland's tax lawyers also had to navigate international waters when the firm represented Micro Focus International PLC in the British company's \$8.8 billion "reverse Morris trust" purchase of Hewlett Packard Enterprise Co.'s spunoff software assets. According to the firm, the novel deal, announced in September, represented one of the first times, if not the first, that the acquisition structure — where a spunoff company merges with another — had been used in a non-American company's purchase of a spinoff.

“It involved a lot of intricate tax planning because there’s a tax-free spinoff and an acquisition by a foreign company,” Shulman told *Law360*.

Under the deal, HPE — which was recently spun off from HP Inc. — agreed to hand over its application delivery management, big data, enterprise security, information management and governance, and IT operations management businesses to Micro Focus in exchange for a 50.1 percent stake in the new combined business for HPE’s shareholders and a \$2.5 billion cash payment to HPE before the deal’s closure.

It was also another banner year in Kirkland’s ongoing work representing Energy Future Holdings, whose \$40 billion restructuring the firm’s tax attorneys have handled for nearly five years. Leading the tax team, including on a tax-free spinoff of Texas Competitive Electric Holdings Co. announced in July, has been senior partner Todd F. Maynes.

Maynes described the TCEH move as the first of its kind, qualifying both as a tax-free spinoff and as a tax-free reorganization commenced under the U.S. Bankruptcy Code.

“It was a very unusual, very high-dollar, very high-profile transaction,” he told *Law360*.

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Maynes also highlighted Kirkland’s work advising Corning Inc. on a deal announced in December 2015, which closed in June and saw the glass manufacturing company exchange its interest in Dow Corning Corp. — which it jointly controlled with Dow Chemical Co. — in return for a 100 percent stake in a newly formed entity, which in turn controls 40 percent of Hemlock Semiconductor Group. The deal was fashioned as a tax-free spinoff and also comes with roughly \$4.8 billion in cash for Corning.

“Dow Corning really fit much better with Dow Chemical than it did with Corning,” Maynes said, noting that the company’s more than 50-year-old stake and very low tax basis made creating a favorable tax structure very difficult.

In addition to its presence in New York, Chicago and San Francisco, Kirkland’s tax practice has grown recently with the addition of two partners and a number of associates in Houston, an office that opened in 2014 and is now nearly 100 lawyers strong, Shulman said. He anticipated more growth in Texas because of private equity oil and gas activity, to which

tax is a critical element. Nor is Texas the only place for potential growth.

“We’ve added tremendous capabilities across the M&A spectrum in the last couple years in New York,” he said, both organic and in outside hires. “And you can’t do the M&A business without top-of-the-market tax. So I expect our partner ranks in New York to grow over time, to sync up with the growth in the M&A, private equity, public company, etc. platform.”

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