

Tax Group Of The Year: Morrison & Foerster

By Ama Sarfo

Law360, New York (January 07, 2014, 2:58 PM ET) -- Tax attorneys at Morrison & Foerster LLP guided billions of dollars in acquisitions involving Sprint Corp., Toshiba TEC and Pinnacle Entertainment Inc. in the past year and monitored the tax consequences of the Residential Capital LLC bankruptcy case, landing them among Law360's Tax Practice Groups of the Year.

In the tax world, some firms are experts at tax planning, while others are hard-charging litigators with feared tax controversy practices. Other firms are highly adept at handling federal tax issues, while others excel in the state and local tax realm. But Morrison & Foerster is special among law firms because it excels in all of those areas.

"We work very hard to understand what it is our clients do, and we're very passionate about helping them to get answers that work for them," tax partner Bernie Pistillo told Law360. "We use the tax laws as a solution, as something that builds and adds value, for our clients. We don't present them as a roadblock."

ResCap used to be the fifth-largest mortgage servicer in the country, and its May 2012 tumble into Chapter 11 bankruptcy spawned a highly complex case that dragged until mid-December when a New York bankruptcy judge finally approved the company's liquidation plan. And Morrison & Foerster's tax counsel were instrumental in multiple aspects of the case, according to tax partner and department co-chairman Thomas Humphreys.

"There were a couple of asset sales that needed to be accomplished with a couple of different buyers, and we advised ResCap on the tax consequences of those sales and negotiated the asset purchase agreements from the tax side," Humphreys told Law360. "We also helped structure the ResCap liquidating trust so it is a flow through entity for tax purposes."

Recently, the firm faced another uphill battle when it sought to convince a New York State appeals court that publisher and broadcaster Meredith Corp. should factor all third-party programming in the property factor of its tax apportionment formula, regardless of whether the programming was received through videotape or satellite.

A state tax appeals tribunal already had rejected Meredith's stance, and the New York Appellate Division rarely overturns the tribunal. But in November 2012, the appeals court found merit in partner Hollis Hyans' argument that the satellite and videotape distinction was arbitrary and capricious because the form of transmittal didn't impact Meredith's business. Accordingly, it reversed the tribunal.

And the ruling could potentially change New York City's general corporation tax, Hyans said.

"As in many areas of the tax law, the New York City law is modeled on the state law and has similar provisions, although it sometimes takes the city a few years to conform," Hyans said. "For other broadcasters that have locations in NYC, we do expect that this will impact how the apportionment formula will be treated, because the statutes are so similar."

Morrison & Foerster scored a major win in August for Lorillard Licensing Co. LLC, which owns and licenses trademarks to tobacco giant Lorillard Tobacco, when a New Jersey Tax Court judge barred the state from altering Lorillard Licensing's corporate tax apportionment formula and increasing its tax burden by eliminating states from the formula that did not tax Lorillard Licensing.

"The issue impacts many companies, banks, financing entities, licensing corporations — any entities where New Jersey has been saying it can subject them to tax based on an economic nexus theory," tax partner and department co-chairman Craig Fields said.

The case is ongoing, and the state filed an appeal Dec. 30, Fields added.

In the past year, Morrison & Foerster's tax attorneys also had a ringside seat at some of the largest and most complicated deals.

The firm represented SoftBank in its \$21.6 billion takeover of Sprint Nextel Corp., which closed in July and required some sophisticated tax structuring to ensure that Sprint's shareholders could defer or recognize their tax liabilities at their choosing, according to partner Bernie Pistillo.

"We formed a new holding company that the Sprint shareholders contributed to, and SoftBank also contributed cash to the new company, so that the shareholders could get deferral treatment," Pistillo said. "Otherwise there would have been too much non-stock consideration to qualify for the nonrecognition provisions."

The firm also represented Toshiba Corp. subsidiary Toshiba TEC in its \$850 million acquisition of IBM's retail store solutions unit — a job that required Pistillo and his team to figure out how best to structure Toshiba's acquisition of an IBM worldwide business, including how to avoid triggering multiple value-added taxes in various jurisdictions, he said.

And in the gaming world, Morrison & Foerster represented Pinnacle Entertainment Inc. in its \$2.8 billion acquisition of Ameristar Casinos Inc., which was completed in August.

"Gaming companies tend to be highly leveraged and it's sometimes hard to combine or restructure them in a way that's efficient from both a tax and non-tax perspective," tax partner David Strong said.

As the group pushes forward with existing deals and cases and lands new clients in the year to come, it does so with a deep bench of attorneys — a combined 60 in the firm's state and local tax and federal tax practices. And many of those lawyers have been with the firm for more than 20 years and are well respected by opposing counsel and judicial officials, Fields said.

"We've had slow and steady growth over the years and intend to continue that trend," Fields said. "Our midlevel and senior attorneys rarely leave, and now in the SALT world we have hundreds of years of

combined experience. No other firm has that level of experience.”

Morrison and Foerster's tax practice is also bolstered by the firm's reputation as a go-to for companies in the new economy — telecommunications, technology and media companies that need the firm's lawyers to be innovative in how they adapt tax principles from the traditional bricks and mortar economy to the fast-growing digital economy, Pistillo added.

“The technology companies we work with can't succeed unless they're constantly thinking ahead in novel and creative ways, and they demand that from us as well with respect to the delivery of our legal services,” Strong said.

“We think the world of our practice, and we’ve got a track record to support that,” Hyans added. “I don’t think there's another firm that litigates as many public record cases, and people bring us their toughest cases. So we feel good that we've been successful in so many of them.”

--Additional reporting by Maria Chutchian. Editing by Richard McVay.

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