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Q&A With Latham & Watkins' Diana Doyle

Law360, New York (November 20, 2013, 7:04 PM ET) -- Diana S. Doyle's practice focuses on tax planning for multinational companies with an emphasis on private and public company mergers and acquisitions. She has advised domestic and international companies on such matters as structuring taxable and tax-free stock and asset acquisitions and dispositions, tax-free reorganizations and spinoffs, securities offerings, limited liability company agreements and partnership tax. Doyle also has significant experience with tax audits and litigation, including refund claims and franchise tax disputes. In 2014, she was named by Best Lawyers as "Chicago Tax Lawyer of the Year." She has also been recognized for her expertise in tax law by Chambers USA, The Legal 500 US, Super Lawyers and Leading Lawyers.

Q: What is the most interesting or challenging tax problem you've worked on to date?

A: A recent interesting challenge involved representing a U.S.-based financial adviser and fund which partnered with U.S. and non-U.S. investors in a multibillion dollar acquisition of a publicly traded company based in the E.U. The target had been distributed from a U.S. corporate group and then merged with a European parent company. The U.S. rules on tax-free spinoffs (the distribution) and inversions (the merger) are extremely complicated. Given the hectic pace of a public company tender offer, the tax team needed to get up to speed quickly on the target's tax structure so that we could evaluate any risks.

I find international deals to be a ton of fun intellectually, because the worldwide team is trying to creatively develop tax efficient structures to the greatest extent possible. Oftentimes, what works in the U.S. doesn't work elsewhere and the advisors across jurisdictions really need to be able to brainstorm together and communicate seamlessly. We had a terrific team that involved international tax and accounting experts and we developed a great working relationship with advisors to other investors. For example, the applicable foreign rules on tender offers differ quite a bit from the U.S. Securities and Exchange Commission and corporate law requirements. We needed to think creatively as to how to marry these foreign rules with the desired U.S. tax treatment.

The teams also needed to find the right vehicles to match our multinational investors' desire for returns with tax efficient structures. As in any cross-border deal, withholding taxes can be a big concern. I've done a lot of work with companies in restructuring their foreign operations, so it was great to be able to put those skills to work in the fast-paced context of a public company tender offer.

Q: Currently, what is a pressing tax concern for your clients and how are you addressing it?

A: The most pressing concern for many of my clients is to create the most tax efficient structure for their worldwide operations. When I started practicing in 1996, the vast

majority of my deals were domestic. I worked on a lot of M&A transactions in which a domestic entity was buying or selling another domestic entity. The international tax rules just didn't come into play as much.

These days, practically all my clients have international operations and they are seeing enormous growth in their businesses outside the U.S. Unfortunately, the U.S. is one of the few jurisdictions left in the world which taxes businesses on their worldwide income. We have a system of tax treaties and foreign tax credits designed to minimize the sting of that system, but that certainly doesn't work perfectly. So organizations will often go to great lengths to try to stay out of (or even leave) the U.S. tax net because they find it difficult to compete with companies that are based outside the U.S. and essentially have a far lower worldwide effective tax rate.

A perfect example of this concern is the focus these days on the "anti-inversion" rules. Those rules can impose draconian U.S. tax treatment on U.S. businesses that want to move their headquarters offshore. It doesn't matter that such a move would make great business sense, as many clients' growing non-U.S. business demand offshore management. The rules are extremely technical and can apply in very surprising ways.

For example, we often are trying to evaluate the location of a company's business operations under current rules that can penalize companies that don't have 25 percent of their worldwide assets, sales and payroll in the same jurisdiction. These rules even impact arm's length business combinations in which one company is acquiring another. It seems that every week or so you see another announcement of a transaction in which these rules are implicated, so it is an extremely hot topic right now.

Q: What do you anticipate being the biggest regulatory challenge in your practice in the coming year and why?

A: The most pressing regulatory concern for many of my clients will be dealing with potential corporate tax reform. Now, I'm writing this on the first day of the federal government's shutdown, so it is likely that corporate tax reform will take a backseat for a while. Nevertheless, there is a strong desire among many factions to fundamentally change the worldwide tax system in the U.S., which is viewed by some as anti-competitive and by many, including myself, as extremely complicated. Of course, there are many views on how to accomplish that, and some depend on one's political persuasion.

The issue right now is uncertainty. I am working with a client that is acquiring a new business in corporate form, which generally results in two levels of taxation. The company pays corporate tax on its earnings and then shareholders pay individual tax on dividends or upon sale of shares. This particular client has an ability to move that business into a pass-through tax structure, which allows the earnings to be taxed only once at the individual owner level, and provides a tax benefit upon exit. Whether that structure should be adopted depends on a number of factors, including where U.S. corporate tax rates are headed. Many people see a lowering of U.S. corporate tax rates, which are high compared to many jurisdictions, as a key component to reform. Right now, the highest U.S. marginal individual tax rate exceeds the corporate tax rate, so it is hard to give concrete advice in this situation. I have several other clients considering similar issues, and the uncertainty really makes planning difficult.

Q: Outside of your own firm, who is an attorney in your practice area whom you admire and what is the story of how s/he impressed you?

A: I really admire my University of Chicago Law School classmate Adam Grais of Sugar Felsenthal Grais & Hammer. Adam and I both started out as tax associates at large law firms. Our connection renewed when he started as in-house counsel to the financial group of a family office and became a client of ours. We learned a lot from each other during that

time period, working together on some very complicated transactions.

Adam left that position to join his current firm, where he is now a name partner. Part of my admiration stems from the fact that I will never see Latham, Watkins & Doyle on the office door. Seriously, Adam impresses me not only with his tax knowledge and business savvy, but with the management and entrepreneurial skills he brings to his firm. I often recommend him when asked for a tax lawyer to handle a “smaller” deal, which in my experience are no less complicated than the “big” ones I usually see at Latham.

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