

Tax Group Of The Year: McDermott Will & Emery

By Philip Rosenstein

Law360 (January 17, 2019, 12:53 PM EST) -- McDermott Will & Emery's tax practice made headlines in 2018 by winning a high-stakes repatriation case before the U.S. Tax Court, advising CVS in its multibillion-dollar acquisition of health insurance giant Aetna and securing a victory for Starbucks in a New York False Claims Act case, landing it among Law360's Tax Practice Groups Of The Year.

With 150 attorneys spread across virtually all of the firm's offices, which span North America, Europe and Asia, McDermott's tax team has a wide international presence and is one of the largest and most recognizable groups at the firm, with roots stemming back to McDermott's birth as a tax law firm in 1934.

The breadth of McDermott's tax practice has made it a central player in matters with international significance. In 2018 it represented ExxonMobil Asia Pacific in the largest tax case in American Samoa history, securing a favorable ruling from the territory's High Court that found the company had no tax liability on the island.

In another matter with cross-border significance, McDermott's tax team won a high-profile case in the U.S. Tax Court for Illinois Tool Works Inc. The IRS had argued the manufacturer's intercompany loan of \$356.8 million was actually a dividend in disguise, adding that even if it was a loan, the U.S. subsidiary that received the capital return from the loan did not have a sufficient basis to absorb the return. The Tax Court rejected both arguments, reasoning that the transaction was indeed what it appeared to be on paper, siding with McDermott's client.

The firm's work on the case helped Illinois Tool Works avoid an over \$84 million tax liability, in what Timothy Shuman, head of McDermott's U.S. and international tax practice, said was an "absolute, smashing victory for the firm."

"It was widely watched throughout the tax bar because it involved a repatriation strategy that quite a few multinationals had looked at or executed, and we won an absolute start-to-finish complete victory for the client," he added.

While the decision was more relevant before the federal tax overhaul in December 2017, as there are now more avenues for repatriation, Shuman explained that many of these types of decisions have a



"long tail on them," and certain debt versus equity and economic substance doctrine principles addressed in the Illinois Tool Works case will be crucial moving forward.

Shuman was directly involved with McDermott's representation of CVS Health Corp. in its massive \$69 billion acquisition of Aetna Inc. and the firm's work on behalf of JAB Holding Co. in various acquisitions. The JAB work included an acquisition of Panera Bread Co. and a merger between Dr Pepper Snapple Group and Keurig Green Mountain to create Keurig Dr Pepper.

The firm's work for these clients is "a great example of McDermott being a destination firm for tax work in particular," Shuman said. "The clients come to us specifically because of our tax expertise and because we have been partnering with those clients for a number of years."

McDermott's tax group was also active on the state level, successfully representing Starbucks in the dismissal of a False Claims Act case brought by two lawyers accusing the company of failing to collect \$10 million in sales tax on warmed to-go baked goods for 10 years. The New York Supreme Court found the lawyers failed to properly allege the coffee giant knowingly avoided or recklessly disregarded the law.

"Corporate taxpayers have been and should be concerned about False Claims Act investigations and lawsuits in the tax space," said McDermott partner Stephen Kranz, who represented Starbucks in the case. "It's a relatively new area of risk and one that is fraught with potential pitfalls as well as liability."

New York was the most recent state to expand its FCA to specifically cover tax, Kranz said, and other jurisdictions are considering doing the same.

McDermott has partnered with MultiState Associates to keep abreast of changes in state and local taxation arising from the passage of federal tax reform, forming the State Taxes After Reform, or STAR, Partnership.

"For corporate taxpayers, there are some very significant issues that stem from conformity to TCJA or lack [thereof]," Kranz explained, referring to the Tax Cuts and Jobs Act.

"The STAR Partnership is a large group of national and multinational companies that are concerned about blind conformity to the TCJA," he said. "We are representing them in the discussion and assisting in their policy advocacy to provide lawmakers with tools for their consideration."

Kranz said he expects 2019 to be more active on the tax conformity front as numerous state legislatures were already out of session in early 2018 by the time the intricacies of the new tax law were fully grasped. McDermott's work through the STAR Partnership will continue to educate policymakers on the state and local impact of the TCJA, he said.

The global firm has also sought to advance the cause of diversity with the expansion of the Tax in the City forum for women, which hosts roundtable events to discuss technical tax issues.

"Tax in the City is one of the ways that McDermott has been at the cutting edge of how do we interact with clients, how do we produce content that is meaningful for clients and also help our folks connect with clients," Shuman said.

The trademarked Tax in the City roundtable events are held in New York, Chicago, Seattle, and

Washington, D.C., where attorneys from around the country meet to discuss seminal tax issues. A May 22 event covered the South Dakota v. Wayfair decision, the European Union's proposal to tax digital goods and the impact of federal tax reform on various parts of the tax landscape.

"It's been a great way for our women lawyers to get client interaction directly and for clients to have a fun and interactive way to learn about the new tax law," Shuman said. "It's just been a real success for the firm."

--Additional reporting by Alex M. Parker and James Nani. Editing by Marygrace Murphy.