

Tax Group Of The Year: Skadden

By Anna Scott Farrell

Law360 (January 17, 2023, 2:02 PM EST) -- Skadden Arps Slate Meagher & Flom LLP's tax team last year helped broker the largest merger deal ever in the video gaming industry, between independent studio Activision Blizzard and tech giant Microsoft, earning the firm a spot among Law360's 2022 Tax Groups of the Year.

Nathan Giesselman, a tax partner in the firm's office in Palo Alto, California, said the companies wanted to reach an agreement quickly, which Skadden helped secure for Activision in less than a month. Microsoft agreed last January to buy out the indie maker of hits including World of Warcraft and Call of Duty for \$68.76 billion.

"There was a ton of pressure to get this signed as soon as possible," Giesselman said, describing several weeks worth of phone calls "at a frantic pace" between the team and client.

Because of the size of the merger, the companies wanted to prepare for the possibility of regulatory antitrust hurdles, Giesselman said. Indeed, earlier this month, the Federal Trade Commission said its enforcers were looking to stop the deal, citing competition concerns.

With the possibility of lag time between signing and closing, Skadden's legal team faced the challenge of creating long-lasting interim operating covenants in a short time, Giesselman said.

"We had to work really rapidly to put us in a place where Activision could protect their tax profile and Microsoft still had the protections they needed," Giesselman said.

Skadden's tax team also represented Delaware-based DuPont de Nemours Inc., which announced in February the \$11 billion divestiture of most of its mobility and materials business to the Dallas-based industrial chemical company Celanese Corp.

The firm said it led DuPont through heated negotiations around the deal structure, which gave DuPont flexibility to separate the target business from its retained business in a tax-efficient way.

As part of the deal, Celanese also planned to acquire 29 production facilities across the globe, a portfolio



of intellectual property that includes about 850 patents and about 5,000 employees.

Giesselman told Law360 that the multinational carve-out transaction featured "an incredibly complex back and forth process with multiple counterparties."

"Our coordination both with the client and with the corporate and business leads here was really crucial and put us in a position to maximize that after-tax return," he said.

Skadden's tax team netted another big win in April when a Colorado federal court sided with its client, Denver-based telecommunications client Liberty Global, in finding the U.S. Department of the Treasury had violated the Administrative Procedure Act in issuing a notice without a sufficient notice-and-comment period.

Skadden helped the company sue the government for a refund of more than \$109 million, arguing that it was entitled to an Internal Revenue Code Section 245A deduction for a transaction in which an affiliate sold its interest in a Belgian telecommunications company to Liberty Global's U.K.-based parent company.

Raj Madan, head of the firm's Washington, D.C., tax group, told Law360 the case established that the IRS must stick to the requirements of the APA, which puts guardrails around what the agency can do.

"That's very important because it creates checks and balances and doesn't give the IRS carte blanche to administer matters in a procedural manner as they see fit," Madan said.

Skadden's tax team also helped Principal Life Insurance Co. negotiate a \$25 billion reinsurance transaction in May, the firm said, including \$16 billion of fixed retail annuity and \$9 billion of life insurance.

Eric Sensenbrenner, head of the firm's Global Tax Group, told Law360 the transaction required attention to complex federal accounting rules and cross-border tax treaty issues.

"To me this deal is representative of one aspect of our practice, which is a deep specialization in insurance company transactional work," Sensenbrenner said. "We have a team of folks with deep experience and knowledge of how those regulated environments work."

In August, Skadden's tax team won a victory for the power management company Eaton Corp. in what the firm said was the first case against the IRS challenging its attempt to cancel an advance pricing agreement.

In siding with Eaton, the Sixth Circuit largely upheld a U.S. Tax Court ruling that the IRS abused its discretion by canceling advance pricing agreements involving the company's Caribbean subsidiaries. The IRS had tried to increase Eaton's 2005 and 2006 taxable income by roughly \$370 million and leverage 40% penalties for Eaton's self-reported corrections on its tax returns.

Madan said the case drew on many members of Skadden's team, from attorneys focused on tax

litigation and administrative practice to the lead appellate lawyers who argued at the Sixth Circuit.

"For me personally it was very rewarding to watch all those pieces come together," Madan said.

--Additional reporting by Matthew Perlman, Lauren Berg, Benjamin Horney, Natalie Olivo, Bryan Koenig and Amy Lee Rosen. Editing by Peter Rozovsky.

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