

INTERNATIONAL TAX

Hodgson Russ tax attorneys provide guidance on the full range of U.S. business and personal tax issues for clients around the world, including multinational companies, public companies, privately held businesses, emerging technology companies, venture capitalists, investors, business owners, executives, and high-net-worth taxpayers.

Our mission is to provide creative solutions to allow our international clients to achieve their objectives in an ever-changing economic environment. We identify tax issues and find responses that take into account all relevant business, personal, and family considerations.

International Business Planning

We have decades of experience advising international business clients on a wide range of U.S. tax issues. Hodgson Russ's Toronto office provides a base for our U.S. legal services to Canadian clients, and our South Florida, New York, and Buffalo offices also are heavily involved with multinational clients who require U.S. tax advice. We develop creative approaches to minimizing costs, reducing risks, and maximizing the tax benefits for cross-border clients, with the goal of providing seamless service to multi-jurisdictional clients. Our attorneys are routinely involved in:

- Choice of entity and capitalization issues
- Business expansion issues
- Inbound and outbound tax issues
- Mergers, acquisitions, and divestitures
- Hybrid structures and debt instruments
- Tax-effective joint venture arrangements
- Business restructuring
- Executive and employee transfer issues
- Treaty planning and interpretation
- Repatriation strategies
- International technology licenses, patents, and royalties
- Corporate anti-deferral issues for U.S. shareholders of foreign corporations, including CFC and PFIC matters
- Employment tax

Contacts

Carol Fitzsimmons
716.848.1477
cfitzsim@hodgsonruss.com
William Turkovich
716.848.1212
wturkovi@hodgsonruss.com

Professionals

Attorneys

James Bandoblu Jr.
Andrew Besch
Katherine Cauley
Paul Comeau
Catherine Eberl
Carol Fitzsimmons
Kevin Gluc
Leslie Kellogg
Heather Kimmins
Brian Krastev
Britta McKenna
Thomas Nelson
William Turkovich
Marla Waiss

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- Withholding tax
- Dividend and loan taxation
- Tax matters related to joint ventures, partnerships, and limited liability companies
- Corporate tax matters of all kinds
- Real property

We also have extensive experience advising on tax planning for nonprofit and charitable organizations, including forming U.S. “friends” groups for cross-border fundraising.

Tax Planning for High-Net-Worth Individuals

Hodgson Russ attorneys frequently advise people with cross-border interests, including business owners, senior executives of public and private companies, entrepreneurs, venture capitalists, and high-net-worth individuals, on U.S. tax issues related to business and investment holdings.

Our counsel includes:

- Personal income tax planning
- Charitable gift planning
- Estate planning, including business succession planning
- Tax issues related to international business holdings
- Compensation issues, including stock options and other equity-based compensation, phantom stock, deferred compensation, rabbi trusts, golden parachutes, and retirement plan issues
- Expatriate planning, including tax issues related to immigration and visa matters

Tax Controversies

Hodgson Russ attorneys represent clients throughout the world in U.S. tax controversies from the auditor’s examination level through the appellate process and in the court system. We have successfully handled a wide variety of controversy work, including:

- Business taxation issues
- Personal income tax litigation
- Estate and gift tax controversies
- Cross-border matters, including transfer pricing disputes

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Experience

Hodgson Russ represented a specialty chemical manufacturer in connection with the acquisition of a manufacturing plant in Europe. The transactions involved international tax planning, senior and subordinated debt financing, environmental issues, and responding to a governmental investigation of the effects of the transaction on competition in the marketplace.

A team of Hodgson Russ attorneys assisted a Canadian start-up company with their expansion plans into the United States. The matter required a full range of specialties including immigration, tax, corporate, technology, and intellectual property. Our services included preparing and prosecuting trademark applications, forming a beneficial U.S. corporate structure, preparing agreements with vendors and users, and researching the U.S. patent landscape.

Hodgson Russ serves as general U.S. tax counsel for a large, privately held business with Canadian owners (senior family members) and U.S. owners (junior family members). For this client, we provide services related to cross-border limited partnership structures; U.S. tax planning for Canadian acquisitions, including use of Canadian unlimited liability companies; 338 elections; tax planning for cross-border distributions of profits; use of family trust structures for U.S. estate tax planning and creditor protection purpose; and general integration of U.S. and Canadian tax rules and objectives.

When a privately held, multinational company underwent a corporate restructuring, the transaction had unintended consequences for the stock appreciation rights (SARs) of the company's U.S. employees. Hodgson Russ attorneys analyzed the tax compliance issues arising under 409A as a result of the transaction, prepared corrective amendments for the plan and award agreements, advised our client on the various correction options and reporting obligations, and prepared the required IRS statements and participant notices. Once the corrections were made, we assisted the client in designing new incentive plans suitable for the company's corporate structure and unique circumstances.

Hodgson Russ assisted a Canadian client with the purchase and sale of U.S. vacation property and advised on the federal and state tax considerations for nonresidents owning U.S. real property, including the reporting of U.S. source rental income and the implications of the Foreign Investment in Real Property Tax Act (FIRPTA) upon a sale of the property. Our services also involved U.S. estate planning with respect to the ownership of the property.

Hodgson Russ advised a Canadian client of the IRS voluntary disclosure options available for U.S. citizens living abroad, including the Offshore Voluntary Disclosure Program and the IRS Streamlined Program. The advice involved a discussion as to whether the client was a U.S. citizen. The advice also involved discussion of U.S. tax compliance requirements applicable to U.S. citizens, including the Foreign Bank Account Report (FBAR) filing rules.

When a European-based heavy machinery manufacturer sought to strengthen its presence in North America, it saw in a U.S. company the perfect opportunity to expand its product line and distribution capabilities in the United States. With the help of Hodgson Russ, the U.S. division of this manufacturer completed the acquisition of this company and its complementary product line, thereby significantly increasing the size of its U.S. operations and positioning itself for future growth in this market. The acquisition — valued at approximately \$43 million, combining a cash purchase price and assumption of debt — is the multinational manufacturer's largest U.S. acquisition to date. The company's U.S. employee base more than quadrupled with the addition of the U.S. company's approximately 400 employees, and it added locations in Alabama, Florida, Indiana, Iowa, Kentucky, Tennessee, Texas, and other states to its manufacturing and distribution network. Prior to this acquisition, Hodgson Russ handled the incorporation of the European manufacturer's U.S. division

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and its acquisition of a smaller U.S. manufacturing company. In connection with this expansion, we designed and drafted restricted stock plans to incentivize their key employees. Since this transaction, Hodgson Russ has represented this client in two additional acquisitions, one on the East Coast and one on the West Coast.

Hodgson Russ acts as special U.S. tax counsel for a U.S. publicly traded company in connection with the redomestication of the company from the United States to a Caribbean jurisdiction. Our services include providing the U.S. tax disclosure language for the company and its shareholders in various SEC documents, tax structuring advice to provide for nonrecognition treatment to U.S. and foreign shareholders in the redomestication (Code Sections 368, 367), and minimizing the potential adverse effect of the U.S. anti-inversion tax rules (Code Section 7874) and the interaction of the anti-inversion rules with the U.S. real estate (FIRPTA) tax rules applicable to foreign shareholders.

Hodgson Russ acts as special U.S. tax counsel to U.S. shareholders of a large Swiss pharmaceutical company in connection with the acquisition of shares of that company. For this client, we provide U.S. tax planning services and assistance with U.S. tax filings by U.S. shareholders and foreign intermediary entities to avoid potential U.S. withholding taxes, including Form W-8IMY, Form W-8BEN, and Form W-8EXP filings.

Hodgson Russ provides U.S. tax and estate planning advice to numerous trust companies that act as trustees or advisors of foreign-based family trusts, applicable to when the trust acquires U.S.-situs assets or has a beneficiary who becomes a U.S. resident. Our services to these clients include U.S. tax advice to avoid the U.S. accumulation distribution rules applicable to distributions from foreign trusts to U.S. beneficiaries and to avoid potential application of the U.S. passive foreign investment company (PFIC) rules for shares of foreign companies held by the trust, U.S. reporting obligations on IRS Form 3520, and recommendations for appropriate language in the trust agreement to provide U.S. estate tax protection for trustees or beneficiaries who are U.S. residents.

Hodgson Russ acts as general U.S. tax and corporate counsel for a large, privately owned company based in Austria. For this client, we provide tax planning for its U.S. operations and U.S. consolidated group; U.S. tax structuring for the acquisition of U.S. target companies, including use of Section 338 elections; and tax planning for repatriation of profits from the U.S. consolidated group.

Handled real estate and tax-related matters for a member of the European Union, including matters relating to real estate exemptions for consular properties, lease drafting, sales tax collection requirements for sales by bookstores operated as an adjunct to the French Consulate, loss of real property tax exemptions as the result of the leasing of consular property to non-exempt persons, among other issues.

Hodgson Russ provides U.S. income tax and estate tax planning advice and documentation to more than 100 Canadian clients with respect to structuring for the ownership, operation and disposition of U.S. real estate investments by Canadian residents, including both commercial and personal use real estate. Our services to these clients include structuring involving family trusts, structuring involving tiered (U.S. and Canadian) limited partnership structures, special limited partnership structuring involving Canadian limited partnerships utilizing “check-the-box” elections for U.S. tax purposes, double-blocker corporate structures, offshore structures, use of non-recourse debt, optimization of special exemptions and benefits available under the U.S.-Canada Tax Treaty, and coordination and integration of U.S. and Canadian tax objectives.

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Hodgson Russ acts as general U.S. tax and corporate counsel to a large, privately held Canadian company (net worth over \$800 million) with U.S. subsidiaries and operations. Our services to this client include general U.S. tax planning, structuring for the sale of a minority equity interest to a U.S. private equity firm, planning for a possible IPO by the Canadian company, special U.S. state tax planning for multistate operations, and tax structuring for the U.S. consolidated tax group and repatriation of profits.

Hodgson Russ acts as general U.S. tax and corporate counsel for a private multinational joint venture group of entrepreneurial companies with a principal owner domiciled in Hong Kong and business operations headquartered in the United States and Canada. Our services to this client include the integration of U.S. and Canadian tax planning for U.S. and Canadian shareholders with respect to structuring for new ventures and sales of U.S. and Canadian member entities, tax planning for the ownership of intellectual property rights, tax planning for the sale of a minority equity interest to a private equity firm, and general U.S. income tax and estate planning for foreign owners of the enterprise.

Hodgson Russ provides U.S. tax advice to numerous Canadian clients with respect to the use of cross-border hybrid structures, including:

- The use of Canadian unlimited liability companies for U.S. investments in Canada to avoid potential adverse consequences under the controlled foreign corporation (CFC) and passive investment company (PFIC) tax regimes, facilitate a flow-through of foreign tax credits for Canadian tax paid at the entity level, and provide for a basis step-up and other U.S. tax benefits upon the purchase of shares of Canadian target companies.
- The use of Canadian limited partnerships, which “check-the-box” to be treated as flow-through entities for U.S. tax purposes.
- Special structuring needed to avoid potential adverse U.S. tax consequences for U.S. limited liability companies with Canadian owners.

Hodgson Russ acts as general U.S. tax counsel and corporate counsel to a business enterprise whose principal owner is domiciled in Barbados, which also involves family trusts owning shares for estate planning and creditor protection purposes, and whose business operations are divided between Barbados, the U.S. and Canada. Our services to this client include tax advice for structuring for ownership of intellectual property rights, structuring of business operations for payments from the U.S. to qualify for benefits under the U.S.-Canada Tax Treaty, planning for U.S. estate tax protection for foreign owners, and transfer pricing and other general U.S. tax advice.

Hodgson Russ acts as special U.S. tax counsel for a reverse takeover transaction involving a Canadian private company and a Canadian publicly-traded company utilizing a reverse triangular amalgamation structure. Our work on this matter includes U.S. tax disclosure language for the applicable offering documents and Canadian security filings, U.S. tax advice on whether the exchange of shares in the takeover transaction will qualify for nonrecognition treatment under Code Sections 368 and 367 for U.S. shareholders, tax structuring advice for consolidating the U.S. subsidiaries of each of the Canadian companies, and structuring to optimize utilization of loss carryforwards within the new consolidated group.

Hodgson Russ acts as U.S. tax counsel to a large, private, Canada-based real estate company with respect to its U.S. operations and activities. Our services to this client relate to its U.S. acquisitions and strategies for investment of funds involving use of cross-border hybrid structures to minimize tax liabilities for annual income and repatriation of profits to

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Canada.

Hodgson Russ acts as U.S. tax counsel for a very large Canadian, publicly traded company with value in excess of \$5 billion in connection with its U.S. activities and operations. Our service include U.S. tax planning for its U.S. business operations, cross-border tax structuring for a finance subsidiary, ownership of intellectual property rights, and strategies for repatriation of earnings from the U.S. consolidated group.

Hodgson Russ serves as special U.S. tax counsel for a publicly traded U.S. company with respect to the redomestication of the company from the United States to Canada (done primarily for security law reasons). Our services have included providing U.S. tax disclosure language for the Canadian security law filings; U.S. tax advice and opinions with respect to the U.S. tax effect to the company and its U.S. and Canadian shareholders under the U.S. anti-inversion rules; requirements for the deemed exchange of shares of a U.S. company for a Canadian company to qualify for nonrecognition treatment under Code Sections 368 and 367; U.S. tax consequences of post-redomestication transactions, including future dividend payments and future sale of shares by U.S. and Canadian shareholders; and interaction of the U.S. and Canadian tax rules for claiming foreign tax credits.

Hodgson Russ acts as U.S. tax counsel to a large, family-owned Canadian enterprise with value in excess of \$500 million with respect to U.S. tax planning for the owner-family members who are U.S. citizens and U.S. residents. Our services to this client include use of cross-border foreign grantor trust structures, special U.S. tax planning with respect to dividends that qualify as tax-free capital dividends in Canada, U.S. tax structuring for dispositions occurring under the Canadian “21-year rule,” and tax planning for structuring of foreign operations to minimize potential adverse U.S. tax consequences under the controlled foreign corporation (CFC) and passive foreign investment company (PFIC) rules.

In the News

How Cross-Border Clients Can Utilize the U.S. Gift Tax Lifetime Exemption Before Rules Change
The Globe and Mail, October 24, 2023

Coronavirus Resource Center

How the New Tax Rules Affect Taxpayers
October 26, 2020

Working Snowbirds Dip Toes in Both Atlantic and Pacific
The Globe and Mail, November 20, 2015

U.S. Client Want to Renounce Citizenship? Offer These Tips
Advisor.ca, June 22, 2015

You & the Law: Foreign Bank Accounts
WBFO, April 14, 2014

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Tax Differences Could Make or Break Your Cross-Border Expansion

Canadian Manufacturing, December 23, 2013

Hodgson Russ Snags 2 Tax Pros for Upstate NY Offices

Law360, September 11, 2013

Jennifer M. Boll and Thomas J. Collura Join Hodgson Russ as Partners

September 9, 2013

Canada Offers Towering Opportunity

Buffalo Law Journal, February 21, 2013

Press Releases

Hodgson Russ LLP Names William S. Turkovich Federal & International Tax Practice Leader

November 30, 2022

Hodgson Russ Celebrates 25 Years With an Office in Canada

Press Release, March 20, 2014

Publications

IRS Extends 2020 Individual Income Tax Return Filing and Tax Payment Deadline from April 15 to May 17, 2021

Hodgson Russ Federal-International Tax Alert, March 18, 2021

IRS Clarifies Delayed PPP Forgiveness Filing Will Not Enhance Deduction Availability Position

Hodgson Russ Federal-International Tax Alert, November 19, 2020

IRS Clarifies Interaction Between Paycheck Protection Program and Employee Retention Tax Credit in M&A Deals

Hodgson Russ Federal-International Tax Alert, November 19, 2020

IRS Announces Pandemic Relief for U.S./Foreign Residency Determinations

Hodgson Russ International Tax Alert, April 22, 2020

Trump Signs CARES Act – Federal Tax Law Changes

Hodgson Russ Federal-International Tax Alert, March 27, 2020

IRS People First Initiative Provides Administrative Collection and Other Relief

Hodgson Russ Federal-International Tax Alert, March 26, 2020

IRS Announces Federal Income Tax Payment Deferral

Hodgson Russ Federal-International Tax Alert, March 19, 2020

Important Exception to US Expatriation Provisions

Canadian Tax Highlights, October 16, 2019

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IRS Relief Procedures for Certain Former Citizens

Canadian Tax Highlights, October 16, 2019

IRS Relief Procedures for Certain Former Citizens

Hodgson Russ Federal and International Tax Alert, September 9, 2019

Presentations & Events

Update on IRS Operations and Foreign Information Reporting

Seasons 52, November 2, 2023

Southern Tier Chapter Taxation Conference

Holiday Inn Binghamton Downtown, 2-8 Hawley Street, Binghamton NY 13901, October 26, 2023

Ontario Legal Conference - Cross Borders

Ontario Bar Association, May 4, 2023

A Practical Introduction to Nontaxable Corporate Reorganizations

ABA Section of Taxation 2022 Fall Tax Meeting

Dallas, TX, October 13, 2022

US Expat Tax: Year-End Update

November 17, 2021

IRS Foreign Information Reporting and IRS Controversy Matters

October 7, 2021

Talkin' Tax: Tax Proposals in President Biden's Fiscal Year 2022 Budget

June 29, 2021

Ownership of Vacation Property Across the Border

May 19, 2021

Virtual Bridge Market Entry Program: Legal Issues in Financing, M&A, and Fundraising

April 28, 2021

Canada Practice Webinar Series

November 17, December 1 & 15, January 5 & 19