

CANADA-U.S. CROSS-BORDER

For more than 50 years, Canadian businesses, individuals, nonprofits, and their law firms have turned to Hodgson Russ for U.S. legal advice that is precisely calibrated for cross-border clients. Hodgson Russ provides experienced U.S. legal representation that focuses on the unique needs of the Canadian market, and we offer high-quality, cost-efficient legal advice to help Canadian businesses, as well as European and other international businesses with a Canadian presence, succeed in the United States.

As one of only a few law firms with a full-time office in Toronto devoted exclusively to practicing U.S. law, and with one of the largest cross-border teams among U.S. law firms, Hodgson Russ is well positioned to help Canadian clients understand the effects of U.S. law on their business interests and develop practical legal strategies for their particular situations. Whether counseling clients through major acquisitions or offering legal guidance on everyday matters, attorneys in our U.S. offices work closely with their Toronto colleagues to provide Canadian clients with a legal team focused on helping them establish, maintain, and expand their foothold in the U.S. market. Our attorneys also have extensive experience counseling U.S.-based businesses on the U.S. legal issues involved with entering the Canadian market.

Hodgson Russ's Canada-U.S. cross-border team regularly counsels clients in the following legal areas:

- Antitrust
- Bankruptcy and international creditors' issues
- Business structure and expansion
- Capital market transactions
- Employee benefits
- Estates and trusts
- Executive compensation and relocation
- Export administration regulations
- Food and Drug Administration (FDA) regulatory matters
- Financing transactions
- Franchise and distribution
- General corporate
- Government contracts and relations

Contact

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Professionals

Attorneys

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Christofer Fattey
Carol Fitzsimmons
Kevin Gluc
Peter Godfrey
Thomas Grenke
Michael Hecker
Timothy Ho
Elizabeth Holden
Rick Kennedy
Heather Kimmins
Brian Krastev
Joshua Lawrence
John Lopinski Ph.D.
Michael Maxwell

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- Immigration
- Intellectual property
- Internal Revenue Service (IRS) voluntary compliance
- Labor and employment
- Litigation
- Multinational mergers and acquisitions
- Products liability
- Structuring for acquisition of U.S. commercial and residential real estate
- Taxation (international, federal, state, and local as well as dispute resolution)
- Technology transfers and joint ventures
- Venture capital and project financing

Hodgson Russ understands U.S. law in a Canadian context, and our attorneys are sensitive to the differences in law, expectations, and culture that characterize cross-border transactions. While our practice is restricted to U.S. law, we are frequently invited to present to peers and members of the public on cross-border legal topics by both Canadian and American organizations, including the American Bar Association, the American Chamber of Commerce in Canada, the Canadian Employee Relocation Council, the Canadian Tax Foundation, Society of Trust and Estate Practitioners (STEP), the Council of American States in Canada, the Law Society of Upper Canada, and the Ontario Bar Association.

Hodgson Russ has six offices in the United States and Canada, including in the major financial and business markets of New York and Toronto. With much of our infrastructure in lower-cost jurisdictions, Hodgson Russ is able to offer clients a full range of excellent-quality legal services in some of North America's top economic markets without the disproportionate expense of other large U.S. firms.

For information, analysis, commentary, and resources on the latest developments in cross-border law, visit our publications page for the Smarter Way to Cross blog archives.

Experience

Hodgson Russ represented a Canadian mutual fund as borrower in connection with the U.S. aspects of a \$117 million credit facility secured by senior secured loans.

Britta McKenna
Elizabeth McPhail
Ryan Murphy
Cristin Murray
Thomas Nelson
Kinsey O'Brien
Adam Perry
David Reed
R. Kent Roberts
Matthew Scherer
Gary Schober
Jeffrey Stravino
James Thoman
William Turkovich
Paul Vallone
Marla Waiss
Amy Walters
Sujata Yalamanchili
John Zak

Managing Partner

Benjamin Zuffranieri Jr.

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Hodgson Russ represented a major Canadian bank in connection with a \$175 million cross-border offering of securities. We were the lead firm for U.S. aspects of this transaction.

Hodgson Russ represented a Canadian lender in connection with the U.S. aspects of revolving and term loans aggregating \$40 million. The loans were used to finance the borrower's new manufacturing operation in Western New York, including a bridge loan pending receipt of brownfield tax credits.

Hodgson Russ attorney John J. Zak represented a NASDAQ-listed electronics manufacturer based in Ontario, Canada, in its investigation and subsequent public disclosure of a significant accounting overstatement occurring at a foreign subsidiary. The matter involved significant consideration of the rules regarding accounting restatements and related issues.

Hodgson Russ assisted a midsize Canada-based foam products manufacturer with an asset purchase. This was the client's first U.S. acquisition. As a result, we also advised them with respect to tax structuring, implemented a U.S. structure, obtained U.S. work visas, and provided other general U.S. legal advice.

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 attorneys represented a Canadian manufacturer of home comfort care and compact appliances in the U.S. aspects of an asset based credit facility.

Assisted a client (with operations in both Ontario, Canada and New York) on food-related agreements and M&A transaction related matters.

Representation of Canadian Client Charged with Ten-Year Mandatory Minimum Importation Offense. Obtained Dismissal of All Charges.

Handled importation issues, brokerage agreements, distribution agreements and keg handling agreements for a Canadian-based brewing company.

Hodgson Russ assists a Canadian importer and distributor of food products with U.S. corporate formations and compliance, restructuring, bank financings, and other commercial matters.

Hodgson Russ advises a Canada-based pub and casual dining franchise system on compliance with U.S. franchise law.

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.

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Represented a Canadian manufacturing client in the development of a set of construction documents for its use in the installation of its products.

For a Canadian client interested in bringing a known consumable food additive into the United States, a Hodgson Russ intellectual property team evaluated a large number of relevant patents related to the process of preparation of that additive. The team then provided a freedom-to-operate opinion, based on which the client was able to proceed with its plans for preparing the product in Canada and bringing it into the United States for sale.

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.

Hodgson Russ advised our client, a Canadian-based software venture capital firm, on its \$750,000 Series A-1 investment. Hodgson Russ negotiated all transaction documents, including the stock purchase agreement, term sheet, management rights letter, investor rights agreement, indemnification agreement and CEO employment agreement.

Represented a Canadian company in the negotiation of a design-build agreement for the development and construction of an approximately 31,000 square foot addition to a U.S. manufacturing facility.

Represented a large, Canada-based real estate investment company in the closing of two separate real estate acquisitions and related Freddie Mac loans of \$16,730,000 and \$17,880,000, respectively.

Hodgson Russ represents Pita Pit, Inc., a quick service restaurant franchise system founded in Canada, with respect to U.S. franchise law compliance. Our attorneys act as coordinating legal counsel for Pita Pit International Inc.'s global expansion.

A Hodgson Russ team of corporate and securities attorneys led by John J. Zak represented a Canada-based professional services company with significant U.S. assets and operations in its sale to an Australian acquirer. The transaction involved an expedited Hart-Scott-Rodino antitrust filing and the issuance of acquirer securities to U.S. shareholders of the seller.

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.

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Hodgson Russ acted as U.S. counsel for TriWest Capital Partners, a Calgary-based private equity firm, on a) its \$75 million investment in a building components manufacturer with U.S. operations in and b) its \$60 million investment in an oil and gas related service provider with U.S. operations.

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.

Hodgson Russ acts as U.S. legal counsel to Canadian-based Viziya Corporation and its U.S. subsidiary, Global PTM, Inc., a provider of software products to enhance ERP-based asset maintenance systems, on a wide variety of U.S. corporate and commercial matters. Viziya ranked number 17 in the Deloitte Fastest Growing Canadian Technology Companies for 2014.

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.

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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 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.

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In the News

Cross-border M&A will continue to deal with aggressive antitrust enforcement in 2024
Canadian Lawyer Magazine, February 21, 2024

Stravino Co-Presents UB Law's Highest Award to Judge in Washington, D.C.
University at Buffalo School of Law, September 15, 2022

Gary Schober Gives Insight to Wegmans' Discontinuation of SCAN App
WGRZ, September 15, 2022

Thought Leaders - Canadian Border Remains Cloudy Issue for Economy
Buffalo Business First, July 28, 2021

Thought Leaders: Optimism Rules
Buffalo Business First, June 26, 2020

Economic Flow from Canada Creates Business and Legal Opportunity
Buffalo Business First, May 17, 2019

Buffalo Business First - Thought Leaders: Trade & Tariffs
Buffalo Business First, November 23, 2018

Enforceability of Wayfair Decision on Foreign Companies Unclear
Tax Analysts, June 28, 2018

Tariffs on steel and aluminum spark worries about cost, lead times
Buffalo Business First, June 8, 2018

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

Press Releases

Matthew G. Cameron Joins Hodgson Russ LLP
August 10, 2023

Hodgson Russ Attorney Named to *Best Lawyers in Canada* 2021 Listing
Hodgson Russ Press Release, August 27, 2020

Two Hodgson Russ Attorneys Selected to Author Monthly Columns in Tax Notes State
Hodgson Russ Press Release, April 27, 2020

Hodgson Russ Attorney George Eydt Named to *Best Lawyers in Canada*
Press Release, September 2, 2015

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Hodgson Russ Attorney Victoria Saxon Named to Best Lawyers in Canada
Press Release, August 24, 2015

Hodgson Russ Celebrates 25 Years With an Office in Canada
Press Release, March 20, 2014

Publications

Does Your Website Comply With U.S. Law and The Implications if it Does Not
Hodgson Russ Canada-U.S. Cross-Border and Cybersecurity & Privacy Alert, July 7, 2022

U.S. Securities Law Considerations in Structuring a Cross-Border Fund
Hodgson Russ Canada-U.S. Cross-Border Alert, June 10, 2021

To Register or Not to Register: A Primer for Ontario Investment Advisers
Canada-U.S. Cross-Border Alert, May 19, 2021

Private Offerings Update - 2021
Hodgson Russ Canada-U.S. Cross-Border Alert, February 2, 2021

Cross-Border Philanthropy: Obtaining a U.S. Income Tax Deduction for a Donation to a Canadian Charity
New York Law Journal, January 22, 2021

Understanding Collection Options for Lenders Under Article 9 of the UCC
Hodgson Russ Bankruptcy, Restructuring & Commercial Litigation Alert, October 23, 2020

Cross-Border Planning for Canadian Registered Retirement Plans
Estates, Trusts & Pensions Journal, March 2, 2020

Re-Perfection of a Lapsed Security Interest
Hodgson Russ Cross-Border Finance Alert, January 8, 2020

Important Exception to US Expatriation Provisions
Canadian Tax Highlights, October 16, 2019

IRS Relief Procedures for Certain Former Citizens
Canadian Tax Highlights, October 16, 2019

Presentations & Events

Doing Business in the U.S.: Accelerate your Food Processing Business
October 21, 2021

Talkin' Tax: Tax Proposals in President Biden's Fiscal Year 2022 Budget
June 29, 2021

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Ownership of Vacation Property Across the Border

May 19, 2021

Talkin' Tax: U.S. Federal and State Tax Considerations for Canadian Business Expansion Into the United States

April 28, 2021

World Trade Center Buffalo Niagara's Global Business Academy (GBA)

February 17, 2021

Canada Practice Webinar Series

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

Update on Cross-Border Tax Planning

November 19, 2020

I Work Therefore I am: The Developing Definition of an Employee in Canada and Around the World

November 10, 2020

Cross-Border Tax Planning and Working with a Global Family

September 23, 2020

Business Law Refresher 2020

June 23, 2020