

## BUSINESS TAX

Hodgson Russ tax attorneys provide guidance on the full range of U.S. federal business and personal tax issues for clients, including multi-national *Fortune* 500 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 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.

### Experienced Business Tax Attorneys at Hodgson Russ

Our attorneys are service-oriented and practical. We don't simply provide tax advice when asked — we offer creative solutions that help avoid problems.

Hodgson Russ has been awarded a prestigious National “Best Law Firm” ranking by *Best Lawyers/U.S. News & World Report* in the category of Tax Law and an additional Metropolitan Tier 1 ranking in Tax Law.

### Our Business Tax Services and Areas of Expertise

#### Mergers and Acquisitions

Hodgson Russ attorneys structure and negotiate acquisitions, mergers, and divestitures of businesses.

We have extensive experience with transactions that include taxable and tax-deferred asset and stock acquisitions by domestic and international companies. The scope of our extensive experience includes the following areas:

- Domestic and international mergers and acquisitions
- Sales and divestitures
- Canadian and U.S. business transactions
- Corporate reorganizations
- Corporate recapitalizations and redomestications

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#### Professionals

##### Attorneys

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- Tax-effective financing structures
- Spin-offs
- Use of “Section 338” elections
- Executive compensation and severance issues

### Joint Ventures, Partnerships, and Limited Liability Companies

Hodgson Russ attorneys represent clients in the tax issues associated with conducting business and investment opportunities through partnerships, limited liability companies, and other flow-through entities. We have advised our clients in establishing and operating joint ventures from large corporate entities to start-up ventures among individuals. We provide guidance on:

- Debt and equity financing issues
- Structuring for preferential returns
- Real estate ventures
- Cross-border business activities
- Emerging technologies
- Distributions
- Reallocations
- Basis issues

### Corporate Tax Matters

Hodgson Russ attorneys advise and assist clients on business tax matters of all kinds. We have extensive experience structuring complex reorganizations of public and privately held corporations, rendering opinions in connection with acquisitions and securities offerings, and representing corporate clients in spin-offs and liquidations. Our attorneys regularly counsel clients on tax issues arising from regular business operations. We have significant experience handling the tax problems of closely held corporations, including S corporations.

We advise our clients with respect to:

- Operational issues under both Subchapter S and Subchapter C of the Code S corporation qualification
- Reorganization and tax-deferred structuring
- Business formation and capitalization
- Personal holding company and accumulated earnings tax matters
- Consolidated group issues

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- Taxation of distributions
- Taxation of hybrid securities

We have wide-ranging experience in providing tax guidance to real estate developers. We counsel investors on the structuring and tax consequences of investment in real estate ventures.

Our attorneys have extensive experience involving tax issues related to:

- Structuring and negotiating real estate ventures
- Cross-border activities, including FIRPTA issues
- REITs
- REMICs
- Partnership liability issues, debt restructuring, debt forgiveness, and workouts
- Low-income housing tax credits
- Like-kind exchanges, including involuntary conversions
- Tax-exempt financing

## Tax Controversies

Hodgson Russ attorneys represent clients in 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

## Tax Planning for High-Net-Worth Individuals

Hodgson Russ attorneys frequently advise business owners, senior executives of public and private companies, entrepreneurs, venture capitalists, and high-net-worth individuals on tax issues related to business and investment holdings.

Our counsel includes the following:

- Personal income tax planning
- Charitable gift planning
- Estate planning, including business succession planning

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- 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 Planning for Nonprofit and Charitable Organizations

Hodgson Russ attorneys regularly advise clients on transactional, operational, and compensation planning for nonprofit clients, including large health care organizations, educational institutions, and social service providers. We also devise creative structures for the acceptance of gifts by these clients and Hodgson Russ's many foundation clients.

### Experience

Hodgson Russ represented a local real estate developer in negotiating a \$142 million joint venture with large national private equity firm to construct senior housing projects nationwide.

Hodgson Russ closed a merger transaction on behalf of a long-time, NASDAQ-listed defense and aerospace products manufacturing client. As a result of the merger, the client became a wholly owned subsidiary in a deal valued at approximately \$275 million. The closing completed a four-month project in which attorneys from many of our practices contributed in significant ways under intense time pressures and opposite some of the largest firms in the country. Our work included advising our client's board in connection with its fiduciary duties; negotiating the merger agreement; preparing a proxy statement for the special meeting of shareholders and dealings with the SEC and FINRA; defending the company and the board in two shareholder lawsuits alleging, among other things, breach of fiduciary duty by the board; appearing in federal and state court and ultimately settling the lawsuits; advising management on directors and officers insurance matters; advising the board and management on certain options and other benefit matters; handling HSR filings; and assisting on financing related to the transaction.

Hodgson Russ represented a Finnish client in the heat transfer industry in connection with the formation of worldwide joint venture company with a Texas corporation. We also represented this client in the subsequent purchase of the entire company. In addition to corporate work, we assisted this client with respect to compliance law and merger compliance matters.

Hodgson Russ attorneys represented senior management in their purchase of a leading full-service grocery retailer in upstate New York, northern Pennsylvania, and western Vermont. The grocery retailer operates 155 full-service supermarkets and has more than 15,000 associates. Hodgson Russ also represented the senior management group in the financing of this purchase.

Hodgson Russ helped a France-based, publicly traded manufacturer of automotive fluid transfer parts complete the acquisition of a Michigan-based automotive parts manufacturer from one of the largest private equity firms in the United States, including handling all employment-related legal aspects of the transaction. As a result of the deal, the French manufacturer now employs 8,000 people in 11 countries with annual projected sales of €620 million, up from €410 million

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in 2010. Hodgson Russ was the lead firm for the U.S. aspects of this transaction, including advising on the U.S. aspects of a multimillion-dollar acquisition financing package from a consortium of French lenders.

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.

A Hodgson Russ team represented the Buffalo Sabres and its affiliate, HARBORCENTER, in conjunction with the development of HARBORCENTER, an approximately \$200 million, 600,000-square-foot sports, retail, entertainment, parking, and hospitality complex. This first-of-its-kind mixed-used facility includes two ice rinks; a 19-story, full-service Marriott hotel; a sports-themed nightclub and restaurant; retail space; and an 800-car parking facility, all of which are connected to the existing Key Bank Center via skywalk. Hodgson Russ has worked with the Sabres on all aspects of this project from its inception, including environmental review, contract negotiations, permitting, construction, economic development incentives, financing, and tax planning.

Hodgson Russ attorneys represented France-based Cegedim, a leading provider of databases and software solutions for the health care industry, in a deal reached in March to acquire Dendrite International, a former rival in the pharmaceutical marketing solutions sector. The \$751 million deal was expected to result in a combined company with operations in more than 75 countries throughout Europe, North and South America and Asia Pacific, and with annual revenues of approximately \$1.1 billion. Hodgson Russ assisted with all employment-related legal aspects of the transaction.

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 an educational institution with respect to the federal tax issues upon the sale of a building with outstanding tax-exempt bonds. The advice involved an analysis of available IRS remedial actions to preserve the tax-exempt status of the bonds, including a redemption of the bonds and use of the disposition proceeds for an alternative

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qualifying use.

Hodgson Russ formed a \$100 million private real estate investment trust (REIT) to acquire assets in the hospitality industry and then structured and completed the trust's first hospitality investment.

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 represented a New York State-based manufacturer of branded, unbranded, and private-label confectionery products and its affiliate in a sale, merger, equity rollover, and refinancing transaction with a Virginia-based distributor of gourmet food and confections. The merger more than doubled the distributor's annual revenue, while expanding the company's geographic capabilities into the northeast.

On an annual basis, Hodgson Russ attorneys prepare private placement memoranda, including tax opinions, for an independent oil and gas company to offer units to accredited investors in limited partnerships that will invest in the drilling of oil and natural gas wells.

Hodgson Russ represented a Fortune 1000 company in the acquisition of the interests and real property of a privately held specialty parts manufacturer with locations on four continents. Our responsibilities included environmental due diligence review, the management of various environmental consultants, risk analyses related to various acquired properties, and contract drafting and negotiation.

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 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.

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A team of Hodgson Russ attorneys led by John J. Zak represented long-time client, Integer Holdings Corporation (NYSE: ITBR), in its successful tax-free spin-off of its subsidiary, QiG Group, LLC, which converted into Nuvectra Corporation prior to the completion of the spin-off. Nuvectra is a medical device company that is concentrated on the development and commercialization of its neurostimulation technology platform, and, in particular, its Algovita spinal cord stimulation system, for the treatment of various disorders through the stimulation of tissues associated with the nervous system. As part of the spin-off, Nuvectra received approval to list and to have its common stock traded on the NASDAQ Global Market under the symbol "NVTR." Hodgson Russ advised on all aspects of the separation of Nuvectra from Greatbatch and the corresponding distribution of the Nuvectra shares of common stock to Greatbatch's stockholders, including the registration of Nuvectra with the SEC, the listing of Nuvectra's common stock on the Nasdaq Global Market, facilitating the negotiation of agreements between Nuvectra and Greatbatch to establish a framework for their post spin-off relationship; preparation of corporate governance policies and procedures for Nuvectra as a newly publicly-traded company and assisting in the separation of Greatbatch's existing employee benefit programs and the establishment of new programs by Nuvectra. The team of Hodgson Russ attorneys consisted of Craig M. Fischer (securities regulation and corporate compliance); Christofer C. Fattey (banking and finance); Terrence M. Gilbride and Elizabeth A. Holden (real estate); Ryan M. Murphy and Richard W. Kaiser (employee benefits); Peter C. Godfrey (labor and employment); Richard F. Campbell and Andrew D. Oppenheimer (business tax); and paralegal Courtney Scanlon.

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.

Hodgson Russ represented a large real estate brokerage firm in a tax-free spin-off and reorganization of its statewide brokerage business.

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 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

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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

Buffalo Business First - Thought Leaders: Tax Reform  
*Buffalo Business First*, January 18, 2019

New York Tax Department Unveils Draft Business Franchise Tax Regs  
*Tax Analysts*, October 10, 2018

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

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

### **Press Releases**

71 Hodgson Russ Attorneys Ranked in 2023 Edition of *Best Lawyers in America*  
*Hodgson Russ Press Release*, August 19, 2022



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Hodgson Russ Earns Five National-Level Rankings in *U.S. News & World Report*/Best Lawyers 'Best Law Firms' Report  
*Press Release*, November 18, 2015

### **Publications**

Empire Zone Strikes Back: A New Hope in an Apportionment Battle  
*Tax Notes State*, March 4, 2024

The New York Pass-Through Entity Tax (PTET): Frequently Asked Questions and Answers  
*The TaxStringer*, November 1, 2023

Everything, Everywhere, All in One New Jersey Return  
*Tax Notes State*, April 10, 2023

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

The Consolidated Appropriations Act and its Impact on Horse Racing: Uniform Medication Controls, Tax Benefits, and Another Round of PPP  
*Hodgson Russ Equine Alert*, December 31, 2020

Consolidated Appropriations Act Expands Employee Retention Credit  
*Hodgson Russ Federal-International Tax Alert*, December 28, 2020

Congress Authorizes Deductions for Qualifying Expenses Paid with PPP Forgivable Loan Proceeds  
*Hodgson Russ Federal-International Tax Alert*, December 28, 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 Clarifies Delayed PPP Forgiveness Filing Will Not Enhance Deduction Availability Position  
*Hodgson Russ Federal-International Tax Alert*, November 19, 2020

IRS Issues Additional Guidance on Employee Retention Tax Credit; Consistency with Congressional Intent Again Questioned  
*Hodgson Russ Federal-International Tax Alert*, May 5, 2020

### **Presentations & Events**

Update on IRS Operations and Foreign Information Reporting  
Seasons 52, November 2, 2023

Syracuse Chapter Taxation Conference  
Embassy Suites - Syracuse Destiny, November 1, 2023

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New York State Society of CPAs Southern Tier Chapter  
Binghamton, NY, October 31, 2023

Large Scale Solar USA  
Austin, Texas, May 3, 2023

Syracuse Chapter Taxation Conference  
Embassy Suites – Syracuse Destiny, November 2, 2022

AICPA & CIMA National Tax & Sophisticated Tax Conference  
Washington Hilton –1919 Connecticut Avenue NW, Washington, DC 20009, November 1 - November 2, 2022

2022 Hodgson Russ Fall Tax Series  
October 26, 2022

NYSSCPA Southern Tier Chapter Taxation Conference  
Doubletree by Hilton Hotel Binghamton, October 26, 2022

A Practical Introduction to Nontaxable Corporate Reorganizations  
ABA Section of Taxation 2022 Fall Tax Meeting  
Dallas, TX, October 13, 2022

Nonresident and Mobile Workers: Nexus Triggers, State Tax Traps  
March 17, 2022