



## THOMAS W. NELSON

Partner

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For the past 25 years, Tom's practice has focused on international tax matters, particularly Canada-U.S. cross-border tax matters, including cross-border estates and trusts, mergers and acquisitions, and business structuring; tax planning for Canadian companies and U.S. shareholders involved in initial public offerings (IPOs) and private placement equity and debt offerings; offshore tax and trust planning; offshore voluntary disclosure compliance; tax matters for U.S. citizens residing in Canada and other foreign countries; structuring for foreign investment in U.S. real estate (commercial and personal use); and personal income and estate planning for business executives and their families.

Tom's clients range from large publicly traded companies to smaller, multinational entrepreneurial businesses and include clients based throughout Canada as well as Switzerland, the United Kingdom, France, Australia, Austria, the Bahamas, the Cayman Islands, and elsewhere.

Tom exclusively practices U.S. law and is admitted to practice in New York.

### Honors

- Listed, *Upstate New York Super Lawyers (Tax)* 2011 - 2023
- Phi Beta Kappa

### Experience

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

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### Practices & Industries

International Tax  
Business Tax  
Canada-U.S. Cross-Border  
International-U.S. Cross-Border  
Trusts & Estates  
Accountant Professional  
Europe-U.S. Cross-Border

### Admissions

New York  
U.S. Tax Court

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and objectives.

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.

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.

## Education

Allegheny College, B.A., magna cum laude

Cornell University, J.D., cum laude

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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.

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 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.

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- 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 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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## **Press Releases**

55 Hodgson Russ LLP Attorneys Named to 2023 *Upstate New York Super Lawyers* List  
August 23, 2023

Fifty-Nine Hodgson Russ Attorneys Ranked in 2022 Edition of *Upstate New York Super Lawyers*  
*Hodgson Russ Press Release*, August 23, 2022

Fifty-Four Hodgson Russ Attorneys Ranked in 2021 Edition of *Upstate New York Super Lawyers*  
*Hodgson Russ Press Release*, August 20, 2021

Sixty-Two Hodgson Russ Attorneys Named to 2020 *Upstate New York Super Lawyers*  
*Hodgson Russ Press Release*, September 8, 2020

Sixty Hodgson Russ Attorneys Named to 2019 *Upstate New York Super Lawyers*  
*Press Release*, August 12, 2019

Sixty-One Hodgson Russ Attorneys Named to 2018 *Upstate New York Super Lawyers*  
*Press Release*, August 20, 2018

Seventy Hodgson Russ Attorneys Named to 2017 *Upstate New York Super Lawyers*, Hugh Russ Listed Among Top 50  
*Press Release*, September 6, 2017

Sixty-three Hodgson Russ Attorneys Named to 2016 *Upstate New York Super Lawyers*, Hugh Russ Listed Among Top 50  
*Press Release*, August 31, 2016

Sixty-Four Hodgson Russ Attorneys Named to 2015 *Upstate New York Super Lawyers*, Hugh Russ Listed Among Top 50  
*Press Release*, August 19, 2015

63 Hodgson Russ Attorneys Named to *Super Lawyers* Listing  
*Press Release*, August 14, 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

Congress Authorizes Deductions for Qualifying Expenses Paid with PPP Forgivable Loan Proceeds  
*Hodgson Russ Federal-International Tax Alert*, December 28, 2020

Consolidated Appropriations Act Expands Employee Retention Credit  
*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

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IRS Clarifies Delayed PPP Forgiveness Filing Will Not Enhance Deduction Availability Position  
*Hodgson Russ Federal-International Tax Alert*, November 19, 2020

U.S. Election Update: Are Changes to the Estate and Gift Tax Coming?  
*Hodgson Russ Trusts & Estates Alert*, November 11, 2020

Remote Notarization and Witnessing Extended in New York  
*Hodgson Russ Trusts & Estates Alert*, July 21, 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

IRS Denies Deductions for Expenses Paid with Forgiven PPP Loans  
*Hodgson Russ Federal-International Tax Alert*, May 1, 2020

IRS Announces Pandemic Relief for U.S./Foreign Residency Determinations  
*Hodgson Russ International Tax Alert*, April 22, 2020

## **Presentations & Events**

Volunteers from Hodgson Russ LLP Participate in 2023 United Way Day of Caring  
Concordia Cemetery, Buffalo, NY, June 21, 2023

Cross-Border Toolbox Seminar  
Toronto, ON, May 7, 2014

Ontario Bar Association/New York State Bar Association Legal Summit  
Toronto, ON, March 28, 2014

## **Professional Affiliations**

- New York State Bar Association