Jones Day Tax Practice: Spinoffs & RMTs

The Trends

Modern businesses face greater pressure than ever before to achieve earnings goals and justify their multiples. Executives know that a necessary part of this process is regularly examining their businesses to determine if a separation of one or more business lines could maximize valuations, increase internal synergies, improve capital structures and compensation plans, or achieve other key business goals. The U.S. tax law permits such separations to be completed in a tax-efficient manner by way of a spinoff. Spinoffs also have other benefits, such as allowing major movements of business and non-business assets, issuances and reallocations of debt, and distributions to shareholders, in each case largely without U.S. federal income tax.

Certain variations on a spinoff can produce further benefits:

- A spinoff can be structured as a redemptive distribution to one or more shareholders (often called a "splitoff"), allowing shareholders to choose the business line they want to retain and the one they want to dispose of, while still retaining tax-free status.
- A spinoff can join two businesses in a tax-favorable manner by causing the spun-off company (SpinCo) to merge or combine with an interested acquiror or an appropriate target, subject to certain ownership limits (such a transaction is often called a "Reverse Morris Trust" or "RMT").
- Spinoffs can be used as tools to achieve other relevant goals, such as a partial monetization of an asset or business, eliminating regulatory restrictions on nonregulatory businesses currently paired with those subject to regulation, sequestering key assets or significant liabilities, or even forestalling government expropriation.

At the same time, spinoffs have always posed a risk for businesses given the impenetrable nature of some of the applicable U.S. tax rules and the potential for very significant amounts of tax. Failure to follow any of the applicable rules during or even after a separation can produce tax both at the corporate level (on any unrecognized gain in the SpinCo stock distributed) and at the shareholder level (on the receipt of a taxable distribution of SpinCo stock).

Alarmingly, the U.S. legal rules permitting a tax-free spinoff have grown in strictness and intricacy over time. U.S. officials issued lengthy new guidance on spinoffs in 2024 and 2025. A good grasp of the history of these tax-free spinoff rules and the latest updates to them is essential before attempting any type of spinoff transaction.

How We Can Help

Jones Day tax attorneys have a long history of successfully structuring, papering, and opining on major spinoffs, splitoffs, and RMTs for our clients. We have the experience to address all of the relevant steps of such a transaction, including:

- **Planning.** We work with clients in advance of a final decision to engage in a spinoff to position the client to best satisfy all of the applicable rules. We further advise on modeling and optimizing all of the tax consequences, establishing tax-efficient cross-border structures for SpinCo, and determining which assets and operations need to or should be separated or retained. Where appropriate, we have also helped clients quickly pivot between a spinoff and another beneficial structure (e.g., a taxable distribution or RMT).
- **Rulings and Opinions.** We regularly assist clients in obtaining the most favorable private letter rulings they can receive on spinoffs, splitoffs, and RMTs, notwithstanding the increasing rigor and complexity of the IRS ruling process. At the same time, we are also prepared to provide tax opinions on all or any part of a spinoff, splitoff, or RMT, including in situations in which the client is not seeking a ruling.
- **Maximizing Benefits.** We thoroughly understand the tax and non-tax benefits that a spinoff can provide, including through debt exchanges and other monetization transactions, advantageous allocations of tax attributes and liabilities, or tax-efficient compensation schemes. When an astute advisor structures the transaction and drafts the contracts, these benefits can be magnified. We guide our clients through these difficult areas to achieve the best outcomes permissible under the law.
- **Post-Separation Support.** Our tax team can answer any questions that come up or help address post-spinoff developments (e.g., new buyback programs, changes in board overlap), whether our clients need straightforward advice or a technical memo or opinion supporting a post-spinoff transaction. And although very uncommon, if a tax issue does arise, Jones Day has world-class tax litigators and appellate attorneys who can handle every stage of a potential tax controversy and guide the issue to a productive conclusion.

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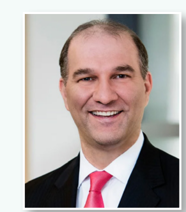
Who Will Be Impacted?

Public companies necessarily consider spinoffs, splitoffs, and RMTs as part of their business planning, but these transactions are available and relevant to private businesses and other firms as well. Given the increasing costs involved, and the huge tax consequences of violating the applicable rules even years later, it is paramount for clients to have knowledgeable advisors who can properly manage, and optimize, these key transactions, from planning to closing.

Key Contacts

For further information regarding our Tax Practice, please contact your principal Firm representative or one of the lawyers listed below.



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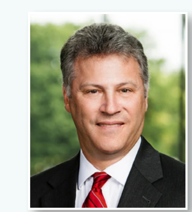

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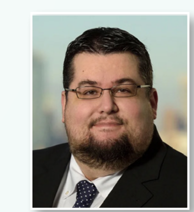

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