# TAXATION

Tax laws and regulations continue to become more extensive and complex. At the U.S. Federal and state levels, tax policy continues to reflect concerns over budget deficits and social policy, resulting in uncertainty, frequent changes in the law, more restrictive legislation, and heightened audit activity. Recent trends demonstrate that taxpayers may expect greater scrutiny of their transactions, ranging from the magnitude of a public company's decision to reincorporate in a foreign jurisdiction, to a closely-held company's reporting position on a sales tax return.

This environment places a premium on advance planning, evaluation of transactions' tax alternatives, and responsiveness to changes in legal and economic factors. Berger Singerman's tax attorneys provide services in developing and implementing solutions to difficult tax issues, in areas including:

- Corporate acquisitions, dispositions and other transactions
- Closely-held business operations and ownership transfers
- International transactions
- State and local taxation
- Compensation planning
- Bankruptcy taxation
- Tax controversies
- Exempt organizations

Berger Singerman's tax practice group consists of highly experienced attorneys who are committed to assisting clients accomplish their business objectives in the most tax efficient manner. We represent individuals as well as privately held and publicly traded entities in addressing the tax effect of domestic and international transactions.

## Corporate Tax

A significant portion of our tax capabilities consists of analyzing and structuring new business ventures, purchase and sale transactions, mergers and acquisitions, reorganizations and other business combinations, capitalizations, and buyouts. Our tax attorneys work closely with our corporate law and mergers and acquisitions team members to provide responsive and value-added planning and efficient execution of advantageous tax strategies.

Our attorneys have substantial experience in implementing acquisitions and sales, financing transactions, and partnership and joint venture agreements. We work with clients in a wide array of industries, including real estate development, telecommunication services, manufacturing and distribution, consumer products, employee staffing, hospitality and professional services.

Our attorneys also provide consultation and opinions on sophisticated issues in reorganizations, business trusts, business expense deductions, environmental remediation expenses, research and development expenses, and tax accounting issues.

## Closely-Held Businesses

Our attorneys have substantial experience in structuring partnership and joint venture agreements for a wide range of business and investment transactions. Our scope of work encompasses all aspects of partnership and S corporation taxation from choice-of-legal entity, formation, purchase and sale transactions, merger and other restructurings, and dissolution.

Florida closely held businesses often center on real estate assets, and in this field our attorneys provide counsel in connection with the full gamut of transactions, including those relating to purchase, ownership, financing, leasing and sale. We have worked extensively with clients in effectuating like-kind exchanges and in addressing the income tax consequences of condemnation of property.

In the closely-held setting, tax planning for the business frequently coincides with planning for the individual owners. We understand the many opportunities and alternatives in this context and seek to exploit synergies between corporate and individual objectives. Our attorneys have designed and implemented leading strategies for joint venture investment by individuals and qualified taxpayers.

## International Transactions

Our Tax practice group advises clients on multinational transactions and operations both inbound to and outbound from the U.S. Our experience in this area includes:

- Structuring foreign acquisition of U.S. businesses and foreign investment in U.S. real property
- Structuring foreign investment and holding companies for the acquisition of assets outside the U.S.
- Designing and implementing structures for the ownership and exploitation of intangible assets on a global basis
- Documenting transfer prices for the sale or use of tangible and intangible property between affiliates
- Designing organizational structures for U.S. taxpayers doing business abroad

With respect to inbound transactions, advance planning assumes paramount importance. We assist many non-U.S. based businesses in designing their U.S. organizational structures in order to minimize nexus and U.S.-source income.

With respect to outbound transactions, our attorneys have substantial experience in assisting U.S. exporters and in establishing organizational structures for the sale and distribution of products globally.

## State and Local Taxation

State and local taxation laws and regulations require vigilance to maintain compliance and design and implement the best tax reduction strategies for companies doing business on a multi-state basis. As state and local economies have expanded and e-commerce has grown, a series of judicial decisions have diluted federal constitutional limitations on the states' taxing jurisdiction over multi-state businesses.

Our attorneys are thoroughly versed on the constitutional issues which arise from many income and other tax assessments at the state and local level. We represent clients in addressing constitutional issues as to nexus for income and sales and use tax purposes, proper application of apportionment statutes, the permissibility of state transfer pricing statutes, the validity of state administrative regulations, and related topics.

We also represent clients in designing and implementing organizational structures in an efficient manner for state income tax apportionment purposes, and in reviewing and improving sales tax compliance positions.

We have successfully represented multistate taxpayers in income tax controversies with the States of Florida, New York, New Jersey, Illinois, Michigan, and other jurisdictions.

## Compensation Planning

Our Tax practice group works closely with clients in designing and implementing both qualified and non-qualified executive and management compensation plans. Our attorneys have designed innovative plans to

maximize the utility of deferred compensation in light of the multiple purposes which such plans serve, and to align them with the fundamental business objectives of the employer.

Particularly in closely-held companies, properly designing and implementing qualified retirement plans may advance corporate-level goals while enhancing the participants' overall estate plan.

## Restructurings and Bankruptcy Taxation

Berger Singerman enjoys an outstanding reputation not only in Florida but also nationally for the quality of our reorganization and bankruptcy practice. Our Tax practice group collaborates with our Business Reorganization Team to address the income and other tax implications which arise in the context of debt restructuring and insolvency, seeking to maximize the utilization of net operating losses of closely-held companies before the filing of a bankruptcy petition, maximize tax refunds available from carrying back current losses to prior profitable tax years, minimize cancellation of indebtedness income, and to utilize and preserve the company's operating losses and other tax attributes. These Teams have also successfully collaborated to maximize the after tax benefits of many acquisitions of distressed businesses for private equity and other acquirors.

## Tax Controversies

Our attorneys represent clients at all stages of federal and state tax controversies. Our services include the analysis of assessments, representation in administrative protests, and tax litigation.

In state tax disputes, the issue of choice-of-forum has particular importance. Administrative agencies as trial-level arbiters do not have the legal authority to rule upon Federal constitutional issues. This makes it crucial to evaluate and determine a taxpayer's full potential claims when an assessment challenge process begins and proceed in the most appropriate forum. Our attorneys' extensive experience in state and local taxation has added material value to numerous cases in structuring and effectuating defenses to assessments.

We also represent both corporate and individual clients in resolving and reducing tax liabilities administratively through installment arrangements and the offer-in-compromise process.

## Exempt Organizations

Our attorneys have represented many clients and tax-exempt organizations with respect to the selection and structure of exempt entities, applications for exempt status, maintenance of public charity status, planning and treatment of transactions in light of the unrelated business income tax, and prohibited transactions. We also work with tax-exempt organizations on the income tax effect of investments in joint ventures and other entities.