Global Private Wealth Management

Philip Marcovici
Consultant
Adjunct Lecturer
Singapore Management University

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Areas to Be Covered

• The Changing World and Its Impact on Wealth Owners
• The Tax and Non-Tax Needs of Wealth Owners, and the New Focus on Tax Advantaged Investing
• The World of International Taxation
• The Wealth Management Toolbox
• Thoughts on Strategy for those in the Industry and the Importance of the CFA
The Changing World and Its Impact on Wealth Owners
The Growing Irrelevance of Tax Based Bank Secrecy to Families

• The QI Regime: Inevitable that this was only the beginning
• FATCA – The Next Steps and Initiatives to globalize the approach
• US Estate Tax and Little Known Dangers for Non-US Persons
• Credit Card Cases – Moving Around the World
• The Impact of Terrorism
• Amnesties
• Voluntary and Involuntary Disclosures
• Developing Countries and Financial Support
• The failed Swiss withholding approach
• Liechtenstein and the LDF and new disclosure facilities

• Exchange of Information – automatic exchange of information around the corner – but are all countries ready for automatic exchange of information?
• EU Savings Directive – repeal and replacement by comprehensive Automatic Exchange
• Growing Global Impact of “All Crimes” Money Laundering Rules
• Institutional Risk and Undeclared Funds
• Mobile Communication Devices
• Rewards from Tax Authorities for Information
• Disgruntled Employees, Spouses and Others
The Needs of High Net Worth Families

- Global transparency and the move away from undeclared money
- The new focus – identifying the real needs of wealth owning families
- Tax advantaged investing
- Mobility planning
Global Transparency and the Move Away from Undeclared Money

• The QI and FATCA Regimes: Can Other Countries Resist their Elegance?
• The OECD and Common Reporting Standards for Automatic Exchange of Information
• US Estate Tax and Little Known Dangers for Non-US Persons
• Credit Card Cases – Moving Around the World
• The Impact of Terrorism
• Rewards, Whistleblowers, and Stolen Bank Data
Global Transparency and the Move Away from Undeclared Money (2)

- Amnesties
- Voluntary and Involuntary Disclosures
- Developing Countries and Financial Support
- Exchange of Information
- EU Savings Directive – Now History, but it was a Beginning, Not the End . . .
  - Interest
  - Individuals
  - Paying agent in the EU or other relevant state
Swiss Bank Secrecy, Exchange of Information, and Growing Transparency

- Swiss banking secrecy
- Exchange of information – the move to Automatic Exchange of Information
- Issues for global families using private banks or other wealth management facilities
- Swiss “withholding” arrangements with the UK and Austria, and its failed “Rubik” strategy
Money Laundering Rules and Secrecy

- “All crimes” money laundering
- The *Pasquantino* decision of the US Supreme Court
- Financial Action Taskforce Initiatives
- The Fourth European Anti-Money Laundering directive
Institutional Risk and Undeclared Funds

- Current events in the US and Europe
- Compliance risks and the way forward
- Special issues relating to relationship managers, financial advisors and others
- The need for individual business plans and ethical standards
- Switzerland and the US Department of Justice
Not Only the US Is Aggressive in Enforcing Its Tax Laws

• But does not cover civil penalties or SEC related problems, and does not protect employees or management
• What of France?
• What of Germany?
• France and penalties for non-reporting of trusts by trustees, and new protections and incentives for “whistle-blowers”
• Argentina and its moves
The Fast Changing Tax Landscape

• Transparency and tax compliance moving towards becoming the norm
• Positive development given financial challenges in meeting needs of governments and addressing wealth inequality – but the road to transparency is not a smooth one
• But has the industry supported misuse of bank secrecy to the detriment of their clients and what is right?
The Misguided Notion that Secrecy Is the Basis for Planning

- Short term thinking and the dangers of investment bankers running private banks
- The failure of industry players and governments to proactively lead
- Lack of strategy at all levels of the wealth management industry
- Is the future to continue to be dictated by “onshore” governments that are themselves not achieving their real objectives?
The Failed Strategy of Insisting on a “Level Playing Field”

- Countries have every right to insist on tax compliance
- But how do we balance the need for tax compliance with the increasing need for privacy protection?
- Over-reaction by governments leading to punitive and overly-intrusive reporting and taxation and attacks on industry players
The Role of Industry and of Financial Centers

- Exciting the industry about the future
- Proper focus on credentials and education – the CFA example
- But is there enough education of governments and associated regulators?
- Dialogue rather than resistance
- Late, but there is still time to be proactive to the benefit of all stakeholders
Tax Evasion and the Misuse of Bank Secrecy Is a Global Problem

- Advisors have to look beyond their own borders – US arrogance as an example
- Swiss attitudes and the havoc they have caused
- Ethics in our industry: time to focus and align with client interests
- Oxfam estimates that global poverty would be eliminated twice over with tax compliance
Understanding the Rough Tools Being Used to Encourage Transparency

• Anti-money laundering rules and tax evasion
• The express train to automatic exchange and the FATCA hammer becoming the global standard
• What about where anti-money laundering rules apply but no automatic exchange?
• Public registers, Piketty and other challenges to navigate
Will Automatic Exchange Be Global and Comprehensive?

- Primarily bi-lateral
- Upcoming “go slow” policies and negotiating for benefits in return, such as market access
- Fooling around with anti-money laundering rules – e.g., Double criminality
- North America and western Europe will be first: Are countries most in need going to be neglected?
Are All Countries Ready for Automatic Exchange of Information?

- Does the tax system respect privacy?
- Are tax rules designed to facilitate corruption?
- Is the tax system used for political means?
- Play by the rules or get out – will countries lose their most important entrepreneurs?
- Safe boxes, real estate and other moves away from the wealth management industry and passive investment portfolios
Non-Governmental Approaches and Alternatives to Information Exchange?

- Transparency International, universities and others to be more involved?
- OECD, IMF and others constrained
- Switzerland and RUBIK – a failed strategy, but perhaps not the last word in withholding solutions?
- Simplified withholding as a temporary solution and as an encouragement to proper development of tax systems – but forget headline rates
Should Tax Be the Driver in Asset Protection and Estate Planning?

- Historical over-emphasis on taxation fueled by improper advice and addiction to bank secrecy
- Advisors who “kidnap” the process and forget the real needs of wealth owning families
- Was bank secrecy really the luxury product it was sold as?
- Is there a real champion of privacy or has privacy become politically incorrect?
Industry Players and Tax Compliance of Their Clients

- How far does a bank or trust company need to go to ensure client compliance?
- Trustee and bank reporting and the new focus on intermediaries
- Self-certification? Tax “opinions”? – but from whom? And on what?
- Are compliance personnel and CEOs the right people to develop policies?
- What is “tax compliance” – the three + levels
The Role of Industry in Encouraging Dialogue with All Stakeholders

- A need to be ambitious
- Today’s tax systems and the tax systems of the future – will there be a global tax system or is tax competition, like all competition, a good thing?
- The need for cooperative strategies
- The exciting future for the new generation in the wealth management industry
The US and Switzerland: Failed Strategies of both Players

• QI to FATCA and Beyond . . .
• Is the US still the best place to hide money, and is it getting even better at becoming a privacy hub?
• The US and its policies on information exchange – Venezuela as an example
• Reciprocity – is it possible?
• UBS, Credit Suisse, and the rest of the gang
• The D of J deals – what they mean for the business of wealth management
Liechtenstein’s Tiny Step . . .

• The Liechtenstein Disclosure Facility and the resistance of the dinosaurs – a lost chance
• TACP and the comprehensive commitment
• Simplified disclosure, composite rates and more
• Wins for Liechtenstein including the ensuring the health of the “animals in the zoo”
• Use of compliance as a way to attract clients
The Way Forward

• Proactive rather than defensive approaches
• Leaders of wealth management businesses need to understand their role and interact with government to navigate the future
• What of Hong Kong vs. Singapore as a regional wealth management center?
• Giving countries MORE than they ask for or think they need
Undeclared Funds and the Golden Rules

- Don’t make the client’s problem your problem
- No new undeclared money
- No new “bad guys”
Undeclared Funds – Solutions

- Voluntary disclosure
- Tax amnesties / repatriation programs
- Review of statutes of limitation and transferee liability
- Mobility planning and relationship to undeclared funds
Institutional Risk and Undeclared Funds
The Needs of Wealth Owners and the New Focus on Tax Advantaged Investing
The Need for Privacy

- Thomas Piketty and his dangerous (and deluded) thinking
- Can populist governments be trusted?
- What is really good for the societies we live in?
- Should inherited wealth be eliminated?
- Can we find ways of encouraging investment into the countries that need investment?
Tax Is Only One of Many Needs

• Some needs affect all families
• Some needs are driven by the laws and other dynamics of countries of residence, citizenship or investment, or due to other connections, such as relationship affiliation
• Examples around the world
• What is tax advantaged investing?
• What is the role of the financial advisor, private bank or trustee in tax matters?
Tax Advantaged Investing: Some Examples

- Tax treaties and withholding taxes
- Focusing on investments that are themselves tax efficient – comparing public companies
- Home country tax systems and effects on investment decisions
- Easy to get in, but have you planned on how to get out?
- Mobility of investors, structures and investments
The Non-Tax Needs of Families and How to Address Them

- Succession and probate
- Managing risks of divorce
- “Second” families
- “Living” wills
- Asset gathering and identification
- Security/kidnapping risks
- Community property
- Political risk
- Family conflict resolution
- Investment flexibility
- Mobility
The Non-Tax Needs of Families and How to Address Them (2)

- Liquidity
- Forced heirship
- Multi-jurisdictional residences/citizenship
- Privacy/confidentiality
- Identify ownership of assets
- Philanthropy
- Asset protection and preservation
- Special assets, art, etc.
- Business succession
- Disability/illness
Changing Demographics
Is Your Family Nuts?
“When the Unwanted Guest arrives . . .
I might be afraid.
I might smile or say:
My day was good, let night fall.
You will find the fields ploughed, the house clean,
the table set,
and everything in its place.”

Consoada by Manuel Bandeira
There Is No Client Better Than a Dead Client!
Multi-Generational Vision

First Generation

Second Generation

Third Generation

Fourth Generation

Entrepreneurial Drive

Founder’s Control

Increased Need for Family Governance

?
Using the Tools of Wealth Planning to Address the Tax and Non-Tax Needs of Wealth-Owning Families
Wealth Management Toolbox – Meeting the Needs of Wealth-Owning Families

- Trusts
- Foundations
- Insurance
- Family limited partnerships
- Companies and share classes
Tax Advantaged Investing

- Looking at the after-tax return
  - Rate differentials
  - Exemptions and exclusions
  - Tax deferral techniques
  - Maximizing offsets, deductions and credits
- Arbitrage between tax systems
- Home country reporting
- Private equity funds and other examples
- Is this the new fast growth industry?
Trusts

• Historical basis for trusts and current their recognition globally
  • Common law
  • Civil law
• A trust is a “relationship”
  • Settlor
  • Trustee
  • Beneficiaries
  • Protector
• International wealth succession, protection, and tax planning
Trusts – A Definition

- A trust is an obligation, whereby a person(s) (the Settlor(s)) transfers property to another person(s) (the Trustee(s)) to deal with that property for the benefit of persons named or described by him (Beneficiaries)
What Is a Trust?

• A trust arises where the settlor vests property in a person (or persons) called the trustee(s)
• The trustees are obliged to hold the property for the benefit of a person or group of people called the beneficiaries
• Fiduciary relationship
Why Establish a Trust?

- Estate and succession planning – devolution of assets and protection of family wealth
- Business succession
- Tax and international planning
- Conflict of law issues – forced heirship
- No probate – continuity after death
Why Establish a Trust? (2)

- Asset protection – matrimonial issues and planning
- Asset management
- Privacy/confidentiality
- Philanthropy
- Protection of special beneficiaries, e.g., vulnerable / minors
Key Features of a Trust

• Not a separate legal entity
  • Legal ownership – trustee
  • Beneficial interests – beneficiaries
• Must reflect this in commercial transactions
• Trustees have unlimited and personal liability; that said, the trust deed may express the liability of the trustees, for example to the value of the trust fund
• Beneficiaries - right to information, accounting etc.
• Migration flexibility
• Perpetuities period
What Is a Settlor?

- What is a settlor?
- What is a dummy or nominee settlor?
- What is an economic settlor?
Who are the Trustees?

- Banks
- Independent institutional trustees
- Private individuals
- The trustees are not agents of the settlor
Duties of Trustees?

- Fiduciary duties – duty of care
- To act fairly between the beneficiaries
- Not to profit from trust
- To account for trust fund / make disclosure
The Beneficiaries

- Rights to information, disclosure, accounting etc.
- Discretionary?
- Fixed?
What Is a Protector?

- What is the role of a protector?
- Fiduciary or personal powers?
- Who do they owe their duties to?
- Refusal to act
- Quasi trustee
- Incapacity or bankruptcy
- Tax / legal considerations in home jurisdiction
Types of Trusts

• Settlements
• Declarations of trust
• Fixed interest trusts
• Discretionary trusts
• Purpose trusts
• Bare trusts
• Constructive trusts
• Resulting trusts
• Statutory trusts
• Life interest
Revocable vs. Irrevocable

Discretionary vs. Fixed
What Is a Discretionary Trust?

- Trustees have a discretion over distribution amongst a specified class of beneficiaries
- No absolute entitlement for beneficiaries
- BUT trustees do have a duty to treat the beneficiaries fairly
What Is a Life (Fixed) Interest Trust?

- Beneficiary has a current fixed entitlement to an ascertainable part of the net income of the trust
- . . . After the deduction of sums paid by the trustees in the exercise of their administrative powers of management
- Income not to be accumulated at trust level
What Is a Letter of Wishes?

• Non-binding expression of the settlor’s wishes for the trustees to use as guidance in exercising their discretionary powers under the trust deed
• Allows the settlor to grant the trustees wide powers with some comfort that they will heed the settlor’s wishes
• Letters of wishes may well be from the primary beneficiary(ies) over the course of time although the settlor will have to set out the initial intentions and purpose of the trust (hopefully!)
Foundations

- Historical basis for foundations
- What is a foundation?
- The use of a foundation as a wealth/tax planning vehicle
Foundations (2)

- Separate legal entity
- “Control” not a problem
- No perpetuities period
- No right to information
- Limited scope for migration
- Less flexible for forced heirship purposes
- Limitation of liability

Liechtenstein, Panama, Bahamas, Netherlands Antilles, and more . . .
Overlap?

- Duration
- Control
- Asset protection
- Legal entity
- Jurisdiction
- Tax
- Flexibility
Trusts and Taxation

- General approaches for revocable and irrevocable trusts
- Reporting requirements and the move towards trustee reporting and tax liability – French and Canadian examples
- Civil law recognition of trusts and the advantages of tax transparency
Onshore and Offshore Companies

- Tax, legal, and confidentiality drivers associated with use of companies
- The role of tax treaties
Partnerships and Succession

- Tax and non-tax issues associated with partnerships
- Limited and family partnerships and their use
- Dealing with “life interests” through partnerships
Insurance

- Life products, annuities and other planning tools
- The parties to a life insurance contract and the tax issues:
  - The Policy Owner
  - The Life Assured
  - The Insurance Company
  - The Beneficiaries
Don’t Trust Anyone!!

• Checks and balances
Residence, Domicile and Citizenship, and Using the Tools of Wealth Planning
Residence, Domicile and Citizenship as the Nexus for Taxation, and the Role of Tax Treaties in Residence Planning

• How do different countries impose tax on individuals?
• Introduction to tax treaties
  • Residence tie-breaker rules
  • OECD model treaty
• Overview of mobility planning issues
  • Exit taxes
  • Departure taxes
  • Pre-immigration planning
Country Tax Systems

• Jurisdictions imposing no tax
• Source based or “territorial” tax systems
• Residence based worldwide taxation
• Citizenship and worldwide taxation – the US example
• The concept of “domicile” in the UK
Direct Taxes

- Income tax
- Capital gains tax
- Transfer taxes (e.g., donation and inheritance)
- Wealth tax
Tax Planning Starts with the Home Country!

- Foreign source income?
- Tax on dividends?
- Tax on capital gains?
- Tax treaties?
- Controlled foreign corporation rules?
- Foreign tax credits?
How Different Countries Impose Tax

- Residency
- Domicile
- Citizenship
- Non-residency
- Location (or *situs*) of assets/source of income and gains
Corporate Persons – Residency and Anti-Deferral Regimes

- Anti-deferral rules (“controlled foreign corporations,” “passive foreign investment companies,” etc.)
- Management and control as a determination of residence?
International Taxation and the Individual

- Citizenship
- Residence
  - Individuals
  - Trusts
  - Companies
- Source / situs

Nexus for taxation?
Investment Protection Agreements, Tax Treaties, and Information Exchange
Mobility Planning

- Expatriation / Giving up of residency
- Exit taxes
- Pre-immigration planning
Mobility Planning (2)

- Reasons to relocate tax residency:
  - Security
  - Taxes
  - Family
  - Personal Ties
Play by the Rules or Leave: How to Exit a Country

- Getting out
- Getting in
- The role of advance planning and the opportunities for private banks and trust companies
- Departure issues on a global basis
  - Freedom of movement
Planning Ahead and What You Need To Know

- Exit taxes and Europe
- Canada and its departure tax
- Giving Up US Citizenship and Green Cards
Exit Taxes

- An increasing number of countries impose an exit tax of some form when long-term tax residents or citizens move their income tax residency.

- In an economic downturn, depressed asset values are beneficial for the client desiring to exit a tax system.
Canada’s Departure Tax

• A Canadian taxpayer relinquishing residence is generally deemed to dispose of his or her assets at their fair market value. Any capital gains on the deemed sale are subject to tax.

• If assets have a depressed value (or built in loss) the amount of tax upon departure will likely be decreased.
US Exit Tax

- The US exit tax applies to citizens and long-term residents who meet one of the following tests:
  - net worth exceeds $2,000,000
  - average US income tax liability of the past five years exceeds $160,000 (2015 amount adjusted for inflation)
  - expatriate will not certify that he has been US tax compliant for the past five years

- If one of these tests are satisfied then the expatriate will be considered to sell all his assets on the day before he expatriates and recognize any gain (note: the first $690,000 [2014 amount, adjusted for inflation] of gain is exempt from taxation)
Play by the Rules or Leave: Where to Go, and Pre-Immigration Planning

- Where should wealthy families go?
- Tax and non-tax issues and planning
Philanthropy and the Succession Plan

- Philanthropy and the various options families have for achieving their philanthropic objectives while being tax efficient
- Responsibility of the older generation to undertake appropriate planning for the next generation
- Role of family foundations and trust
- The role of the “family retreat”
- Family offices – understanding them and addressing their needs
Responsibility of the Older Generation to Undertake Appropriate Planning for the Next Generation

- Importance of laying the groundwork
- Example for next generations
- Planning is an on-going process
- Tax/legal issues vs. “soft” issues
Understanding the Multinational Nature of the Family, and Taking Advantage of It in Planning

• Citizenships/nationalities of family members
• Disclosure/tax issues
• “Play by the rules”
Family Retreats/Meetings and Their Role

• Input on succession/tax/legal issues
• Include spouses to certain extent?
• Social events
• Getting to know trustees/key family advisors
Informing the Younger Generation Regarding Family Wealth

- Age-appropriate programs within family retreats
- Programs outside of family retreats
- Family Responsibility “Pacts”
Empowering the Younger Generation

- Assuming responsibility
- Unified approach for entire family?
- “Owners” of assets vs. custodians for future generations?
- Differing approaches?
Developing Internal Family “Mentors”

- Formalizing role of mentors?
- Parents/siblings/cousins have different perspectives and different ways of relating to each other
Keeping the Family Together:
But not at all Costs?
Family Governance

- Informal/formal family constitution
- Leadership/decision making
- Dispute resolution
- Compensation for family investment work
- Family mission
- Succession strategies for family business – “harvesting” and “pruning”
Dreaming of a Pot of Gold at the End of the Rainbow
Linking the Family Business to Family Wealth and the Tax Issues
Original Business

- Grandfather
  - Son
    - Real Estate
  - Son
    - CH $
  - Son
    - Biz A
  - Son
  - Son
GS=Grand Son
GD=Grand Daughter

Grandfather

Original Business

Son

Son

Son

Son

Real Estate

CH $

Biz A

Biz B

Biz C
Bunnies
Family Branch Trusts

Purpose Trust

Master Trust

Business

PTC

Bank Trustee Administration
Pruning the Tree
Thoughts on Strategy
Strategic Planning for Trust Companies, Private Banks, and Others in the Industry Seeking to Adapt to Change

- Acknowledging that there is a problem
- Proactive or reactive strategies: not one size fits all
- A geographic approach to tax compliance and the work of the OECD in relation to exchange of information
- Pricing and revenue models under challenge – but demand remains strong
- Using changes in global tax enforcement to enhance business and reduce risk
- What services should a bank or trust company offer, and what training and support is then needed?
- Effect of tax transparency on client needs and service offerings
- Compliance as part of client service delivery
- Managing and developing a luxury brand
Individual Career Strategic Planning for Individual Private Bankers, Financial Advisors, and Others in the Industry

- Why is individual strategic planning necessary?
- Aligning your interests with the interests of your bank and clients
- Applying the “golden rules”
Tax Transparency, and Its Effect on Client Needs and Strategies for Wealth Managers
Three Year Snapshot

• What percentage of your clients can be undeclared clients three years from now?

• But what does “tax compliance” really mean?

• And what is the advisor’s role in assuring compliance and why?
Moving from Where You are Today to Where You Need to be Tomorrow
The Business of Wealth Management: Five Years Ago, Today and in 2018 – Preparing for Change
Identifying Strengths:

Build a strategic plan based on the strengths of your institution
Success Based on Innovation and the Application of Knowledge
• Knowledge Management

• Knowledge Sharing

• Training

• Leveraging “Tacit” Knowledge
“Ownership” of the Client Relationship and the Challenge of Family Offices and External Asset Managers
70 Basis Points and More out the Door?
Wealth Planning and Structuring
Charitable Planning
Trust and Foundations Services
Compliance and Risk Management
Family Office
Tax advantaged Investing
Home Country Tax Reporting

RM

CLIENT
Models For Success: Wealth Planning and Fiduciary Services

- Profit or cost centers?
- In-house or external?
- Client contact or “super” RM’s?
- Providing tax advice?
- Providing value to clients
The Role of the Trust Company – Should It Be Bank Owned or Independent?
Addressing the Realities

• Do RM’s have an interest in institutionalizing clients?
• Are structures and relationships accorded appropriate present values warranting acquisition and retention investments?
Relationship between Client and Private Bank Benefits From Fiduciary Services Structures

Duration of private banking relationship

- **With fiduciary solution in place**: 20 years
- **Without fiduciary solution in place**: 6–7 years

"The duration of private banking relationship is three times longer if some sort of fiduciary structures are in place"

Key benefits:

- **Shift from short- to long-term mentality**
  - For both client and relationship manager

- **Increase "stickiness"**
  - Longer duration of relationship
  - Higher frequency of client interactions

- **Access next generation within the family**

- **Get a better knowledge about clients, their assets and needs**
  - Provide occasion for additional cross-selling

- **Show comprehensive capabilities**
  - Increased perceived competence

Source: BCG experience
Aligning the Interests of Private Bank Staff to Those of Clients and the Bank
Tax and Trusts: Are Trust Companies Becoming Toxic Targets of Tax Authorities, and Is This the Fault of the Industry?
Compliance, Training, Marketing, and Strategy: How Do They Fit Together?
Build or Buy? Are Acquisitions a Good Business Strategy in Today’s World?
Swiss Snapshot: Switzerland in Crisis
During the period under review, we noticed that an increasing number of private banks in Switzerland decided or were forced to go into liquidation. In many cases, the impossibility to find an adequate buyer for the bank’s assets led to the liquidation of the private bank and the surrender of its banking license. In other cases, pressure from regulators led to the decision to liquidate the bank.
The theft of client data at several Swiss banks has severely and permanently harmed Switzerland’s reputation as a financial centre with the highest standards of privacy and discretion.”
Are American Clients a Risk or an Opportunity?
Clients at the Center: Understanding that Success Comes Through Truly Meeting Client Needs