The International Family Offices Journal

Editor: Nicola Saccardo

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STEP ADVISING FAMILIES ACROSS GENERATIONS

Globe Law and Business

The International Family Offices Journal

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The International Family Offices Journal

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ADVISING FAMILIES ACROSS GENERATIONS

Welcome to the 33rd issue of The International Family Offices Journal

Nicola Saccardo

I am delighted to introduce another fascinating issue, covering topics relevant to family offices and those they serve. As usual, there is a real breadth of articles which shows the great work being done in this area by practitioners and family office professionals, but a particular theme of this issue is philanthropy and its application to family offices.

Relevant to lawyers operating in the world of family offices, John A Terrill, Michael A Breslow, Dr Christian von Oertzen, John Riches, Eleanor Riches-Lenaghan and Lyat Eyal provide an update on the new AML and regulatory regime for US lawyers, with direct comparison to equivalent approaches in the United Kingdom, Germany and Israel which will be covered in the following two issues.

Moving on to another concern for lawyers, Sophie Dworetzsky comments on the upcoming changes to the United Kingdom's taxation regime particularly relevant to its so-called "non-dom" population. She proposes three main changes to make the anticipated regime more globally competitive to attract, for example, family office principals.

Brooks Reed draws on his experience advising philanthropists to sketch out an optimally tax-efficient approach to charitable giving in a variety of jurisdictions which, when considering the tax deductions often available on such donations, will be a major consideration for those with whom family office advisers work. Mary E Klein, on the other hand, highlights the synergies between philanthropy and technology and how the development of this exciting new area can be shaped by the capital held by family offices.

Andrew Collins, Jamie McMurray and Julia Cox discuss a common family office holding structure – family investment companies. Despite increasing corporation tax rates, FICs can solve a number of problems and can be tax-efficient holding vehicles. Turning from corporate structures to human capital, David Lesperance highlights the important role of outsiders in relation to family offices, who can, in particular, provide the blue-sky thinking and external perspective of private practice.

Returning to the theme of philanthropy, a conversation between Rebecca Eastmond and Andrew Bastawrous sheds light on the motivations which drive family office principals to give their time and money to charitable causes. Values are a central part of an article by Jamie Yuenger, who advocates documenting the "family narrative" to ensure that subsequent generations can continue the work of the founders of successful family businesses and that the family unit remains coherent.

Shabnam Shaikh and Daivik Chatterjee explore the legislative environment governing Indian trusts, a curious offshoot of English trust law, in particular in relation to the liability of trustees. They provide an illuminating comparison to other common law jurisdictions, including England, the United States and Australia. Trustees and governance in general is a key consideration of Greg E Custer and Thomas J Frank, Jr's article on the importance of the inter-generational and interpersonal dynamics within a family to the ability to transition wealth to the next generation.

Ronald Varney provides an interesting insight into the trends of the global art market, the rise of luxury and the curious range of items that are now highly prized by the world's UHNW collectors.

Finally, I comment on the new Bar Committee for family offices of the Chicago Bar Association, which reflects the increasing relevance of such entities for the legal profession not just in the United States but worldwide.

The articles are followed by our usual round-up of relevant highlights from the STEP News Digest.

A particular theme of this issue is philanthropy and its application to family offices.

International perspectives on AML regulatory environment in trusts and estates legal practices – a new era in the United States[1]

John A Terrill, Michael A Breslow, Dr Christian von Oertzen, John Riches, Eleanor Riches-Lenaghan and Lyat Eyal

Introduction

We are practising law in a new era with a constantly evolving regulatory environment. Depending on the jurisdiction of legal practice, over the past five years, various regulatory obligations have been added to the practice of law, whether imposed on attorneys or on their clients. Also, in the cross-border trusts and estates fields, for the unwary, practising in one jurisdiction may subject professionals and their clients to certain obligations under the laws of other jurisdictions. An example may be found in UK legislation, as discussed in detail below but is prevalent in other jurisdictions as well. This affects many aspects of our practice as estate planners and tax advisers, among which are confidentiality rules and the attorney-client privilege.

This article will review the new Corporate Transparency Act and the expected revisions to ethics rules in the United States together with a discussion on the regulation in this area in England, Germany and Israel. The information in this article may be useful as a guide for estate planning attorneys in the United States in their practices.

As background, the G7 set up the Financial Action Task Force (FATF) in 1989 to scrutinise money laundering trends and techniques, and to develop measures to combat money laundering. Much has changed since that time. Watching a classic 1987 Tom Selleck film, you can see three men, who are not intending to board a plane, walk through security to meet someone at the departure gate, an unthinkable action in today's climate.[2] However, in 1989, the flourishing international financial system brought with it an awareness that the system and the professionals involved were vulnerable to misuse for the purposes of money laundering. In 1990, FATF published the first version of its 40 Recommendations which resulted in local legislation in many of its member states which have agreed to implement laws and regulations to combat money laundering and the financing of terrorism based on said Recommendations.

United States

Introduction and background – FATF, Recommendations 22 and 23 and the United States

As is the case in many other nations, including all of the nations whose legal structures are the subject of this article, the United States is an active member of the Financial Action Task Force also known as FATF.[3] The United States, a key member of FATF, has agreed to implement these policies, and has done so in significant measure with respect to financial institutions through the Bank Secrecy Act[4] and regulations promulgated thereunder.

Of particular relevance to lawyers are FATF Recommendations 22 and 23. In Recommendation 22, FATF defines designated non-financial businesses and professions (DNFBPs) to include:

> *lawyers, notaries, other independent legal professionals and accountants when they prepare for or carry out transactions for their client concerning activities such as:*
>
> - *buying and selling of real estate;*
> - *managing of client money, securities or other assets;*
> - *management of bank, savings or securities accounts;*
> - *organisation of contributions for the creation, operation or management of companies;*
> - *creation, operation or management of legal persons or arrangements; and*
> - *buying and selling of business entities.*

Recommendation 22 provides that DNFBPs, including lawyers, should be subject to customer due diligence and recordkeeping obligations, as set forth in Recommendations 10, 11, 12, 15 and 17.[5] Recommendation 23 provides that DNFBPs, including lawyers engaged in the activities listed above, should be subject to suspicious transaction reporting (STR) requirements and prohibited from disclosing the fact that suspicious transaction reports have been filed (no tipping off or NTO).[6] Despite this unambiguous

commitment endorsed by all FATF member nations, unlike lawyers, notaries and other legal professionals in many other countries, US law does not impose formal obligations on American lawyers to participate in the effort to combat money laundering and terrorist financing. American lawyers have protested for decades that our efforts at self-regulation through educational efforts and the ethics rules applicable to lawyers should demonstrate the American bar's commitment to meaningful engagement in the effort to combat money laundering and terrorist financing. Nevertheless, FATF is clearly looking for direct regulation of lawyers, much like what is seen in other FATF member nations, and as reflected repeatedly by the reports of the mutual evaluations conducted on the United States (most recently in 2016, with follow up reports in 2020 and 2024), the United States is rated as non-compliant with respect to Recommendations 22 and 23.[7]

At the same time, the United States has recently enacted broad-based (not risk-based) policies to comply with Recommendation 24 (relating to the transparency of legal persons), that both directly and indirectly draft American lawyers into the US campaign against the use of the US legal system for money laundering and the financing of terrorism, through the Corporate Transparency Act (CTA), a new statutory provision under the Bank Secrecy Act, and the Financial Crimes Enforcement Network's (FinCEN) issuance of a Notice of Proposed Rulemaking (NPRM) Anti-Money Laundering Regulations for Real Estate Transfers (herein the Real Estate NPRM).

Bank Secrecy Act – American lawyers are not directly regulated

The federal statutory structure underlying the battle against money laundering and terrorist financing in the United States is contained in the Bank Secrecy Act, as amended by the US Patriot Act, 31 US Code §5311 et seq (the BSA) and its associated regulations. To harden the financial system against being accessed by criminals, under the BSA, a broad collection of financial institutions are responsible for (1) performing detailed customer due diligence (CDD), including record-keeping, to avoid knowingly or unknowingly doing business with criminals; (2) filing STRs on clients and customers when there are suspicions that the financial services being offered are being used for illicit purposes; and (3) complying with NTO obligations to avoid alerting suspicious actors that law enforcement may be investigating them and their conduct.

The BSA includes a provision that permits the Secretary of the US Treasury to expand the class of persons and entities subject to these obligations (31 US Code §5318(a)):

> *The Secretary of the Treasury may . . .*
> *(2) require a class of domestic financial institutions or* ***nonfinancial trades or businesses*** *to maintain appropriate procedures, including the collection and reporting of certain information as the Secretary of the Treasury may prescribe by regulation, to ensure compliance with this subchapter and regulations prescribed under this subchapter or to guard against money laundering, the financing of terrorism, or other forms of illicit finance* [emphasis added].

The BSA has never directly applied to lawyers. Recently, the US Treasury, acting through FinCEN, proposed the expansion of the foregoing obligations on certain financial advisers not previously subject to BSA obligations.[8] Dating back to 2008, there have been several attempts in Congress to modify the BSA in a way that would impose BSA obligations on lawyers in certain circumstances but those efforts have so far failed to be enacted. Most recently, the ENABLERS Act would have required lawyers engaged in many forms of transactional work to be subject to the same CDD, STR and NTO obligations as financial institutions under the BSA.[9] The ENABLERS Act passed the House of Representatives in July 2022, but was not adopted by the Senate.

Ethical rules and AML/CFT implications – American lawyers' efforts to self-regulate

The lack of formal statutory or regulatory obligations on American lawyers under the BSA or otherwise does not mean that those lawyers have no role to play in the war against money laundering

American lawyers have protested for decades that our efforts at self-regulation through educational efforts and the ethics rules applicable to lawyers should demonstrate the American bar's commitment to meaningful engagement in the effort to combat money laundering and terrorist financing.

American lawyers are proud to be a "self-regulating" profession, and efforts at self-regulation primarily centre around educating lawyers to understand and honour their ethical obligations.

and terrorist financing. American lawyers are proud to be a "self-regulating" profession, and efforts at self-regulation primarily centre around educating lawyers to understand and honour their ethical obligations. Lawyers have important ethical obligations under the version of the ABA's Model Rules of Professional Conduct,[10] applicable in some version in all 50 states and the District of Columbia, which overlap in significant measure with the rest of the world's expectations in the AML and CFT context.

Of particular relevance to this is Model Rule (MR) 1.2(d), which provides that "[a] lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent . . . ". MR 1.2(d) has been the foundation for a number of efforts by the legal community, acting through the American Bar Association along with other partners, to educate lawyers on circumstances that might give rise to money laundering and terrorism financing risks.

First and perhaps most important is the *Voluntary Good Practices Guidance for Lawyers to Detect and Combat Money Laundering and Terrorist Financing* (April 2010). The guidance was a collaborative effort by the American Bar Association, several of its substantive sections, and other organisations including the American College of Trust and Estate Counsel (ACTEC).[11] While not directly addressing the MR 1.2(d) prohibition, the guidance documents detailed planning for lawyers to design and implement risk-based approaches consistent with FATF's guidance. Interestingly, the guidance describes how transactional lawyers might implement a CDD process if the BSA were applied to them.

On 23 May 2013, the American Bar Association Standing Committee on Ethics and Professional Responsibility published Formal Opinion 463 – Client Due Diligence, Money Laundering and Terrorist Financing (23 May 2013).[12] Formal Opinion 463 does a number of things: it endorses the use of the Guidance by American lawyers as a way of minimising the risk of the lawyer being inadvertently involved in a client's fraudulent or criminal behaviour under MR 1.2(d); it reminds lawyers of their obligation of confidentiality under MR 1.6 (an obligation that may be violated were the lawyer to have mandatory STR obligations); and it suggests that lawyers should conduct careful client intake diligence, not unlike the CDD required of financial institutions under the BSA, as a means of avoiding violations of MR 1.2(d)). In sum: "The Committee believes that the advice derived from the Good Practices Guidance is consistent, and not in conflict, with the ethical obligations of lawyers under the Model Rules".[13]

In 2014, the ABA collaborated with a number of other international lawyers' organisations in publishing *A Lawyer's Guide to Detecting and Preventing Money Laundering*.[14] As is the case with the Guidance, the Lawyer's Guide is largely focused on identifying AML and CFT risks at the client intake stage, taking a risk-based approach.

In 2020, the American Bar Association: Standing Committee on Ethics and Professional Responsibility issued Formal Opinion 491 (29 April 2020) titled "Obligations Under Rule 1.2(d) to Avoid Counseling or Assisting in a Crime or Fraud in Non-Litigation Settings".[15] This very important formal opinion heightens the obligation of American lawyers under MR 1.2(d) by imposing a "duty to inquire" for situations in which the lawyer becomes aware of facts that there is a high probability that the client is seeking the lawyer's services in furthering criminal or fraudulent activity. Put another way, the Standing Committee rejected the "willful blindness" defence a lawyer might use when accused of a violation of MR 1.2(d). While still focused, as are the Guidelines and Formal Opinion 463, on CDD issues (both for new clients and for new matters for existing clients), the opinion makes very clear that lawyers do have a role in combatting money laundering and terrorist financing by way of their duty to understand their clients' situations.

Finally, and most recently, the ABA House of Delegates approved an amendment to MR 1.16 in August 2023. MR 1.16, titled "Declining or Terminating Representation", now includes the following (new language highlighted):

(a) A lawyer shall inquire into and assess the facts and circumstances of each representation to determine whether the lawyer may accept or

> ***continue the representation***. *Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:*
> . . . .
> ***(4) the client or prospective client seeks to use or persists in using the lawyer's services to commit or further a crime or fraud, despite the lawyer's discussion pursuant to Rules 1.2(d) and 1.4(a)(5) regarding the limitations on the lawyer assisting with the proposed conduct.***

The resolution adopting this new and more specific reason for refusal to act on a client's behalf includes new comments to the Standing Committee's Comments to MR 1.16 that highlight the circumstances under which lawyers may be asked to engage in a representation that may run afoul of MR 1.2(d).[16] The accompanying report included as part of the House of Delegates' Resolution, submitted by the Standing Committee on Ethics and Professional Responsibility and the Standing Committee on Professional Regulation, refers to Formal Opinions 463 and 491. To date, the proposed changes to MR 1[17] have been adopted in only a handful of states.

The common thread through all of the self-regulatory measures implemented by the American bar is a risk-based analysis of client circumstances to generally prevent lawyers from working with suspected criminals, or by allowing their services to be used, unwittingly, for corrupt purposes. To develop a risk profile requires robust and in-depth client in-take procedures, including customer due diligence, thus allowing a situation-by-situation analysis to inform a lawyer's conduct. The resistance by the American bar to formal STR and NTO obligations has been driven in large part by the critical position that confidentiality plays in the lawyer-client relationship. As outlined in the following section, Congress and FinCEN have achieved indirect regulation of lawyers, through their role in complying with broad-based regulations that apply to "every situation (unless there is an exception)".

Recent efforts by the US Treasury to address beneficial ownership – American lawyers are indirectly regulated

As outlined, the impact on American lawyers of the FATF-led efforts to combat money-laundering and terrorist financing has been limited to efforts by lawyers, in efforts of self-regulation, to structure the Model Rules of Professional Conduct in a fashion that imposes ethical obligations on lawyers but not legal, formal obligations as required by FATF's Recommendations 22 and 23. While efforts in Congress have so far been unsuccessful in expanding the BSA to American lawyers, other recent initiatives by Congress and FinCEN have been undertaken to address AML and TF concerns in ways that impact lawyers indirectly.

Recommendation 2416 provides, in pertinent part, as follows:

> *Countries should take measures to prevent the misuse of legal persons for money laundering or terrorist financing. Countries should ensure that there is adequate, accurate and timely information on the beneficial ownership and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities.*

The most recent examples of US efforts to comply with Recommendation 24 are the CTA and the Real Estate NPRM. Lawyers will have an important role to play in compliance with the CTA and the Real Estate NPRM, including being directly obligated to file reports in certain circumstances if the Real Estate NPRM is adopted in its current form.

What is important to understand about both initiatives is that neither is directly risk-based. The CTA and its implementing regulations take a broad-based approach by requiring beneficial ownership information reporting for essentially all legal entities, other than those that are already likely to be subject to government oversight through other regulation (eg, financial institutions subject to the BSA, publicly-traded entities monitored by the SEC, etc). The Real Estate NPRM will, if implemented in its present form, require reports to be filed regarding an enormous number of transfers of residential real estate, not

The common thread through all of the self-regulatory measures implemented by the American bar is a risk-based analysis of client circumstances to generally prevent lawyers from working with suspected criminals, or by allowing their services to be used, unwittingly, for corrupt purposes.

A reporting company is defined as a corporation, partnership, LLC or other similar entity that is created by the filing of a document with a secretary of state or a similar office, or a foreign entity that files a document with a secretary of state or similar office to do business within the United States.

because the transfers occur in problematic jurisdictions and not because the transfers involve any particular amount of money, but just because the US Treasury has concluded that it must be aware of and monitor transfers of residential real estate into a trust or legal entity like an LLC or partnership in which no bank financing is involved. To the US Treasury, any such transfer, by its very nature, poses a risk of money laundering or terrorist financing.

Efforts to gather information regarding entities – Corporate Transparency Act and Disclosure Regulations

Congress enacted the CTA at the beginning of 2021 as part of the National Defense Authorization Act for Fiscal Year 2021 (NDAA).[18] On 29 September 2022, FinCEN released final regulations (Final Disclosure Regulations).[19] The CTA requires reporting companies to disclose to FinCEN specific information regarding their beneficial owners and company applicants.[20] In addition, the Final Disclosure Regulations require specific information on the reporting company itself to be disclosed to FinCEN.[21]

On 1 March 2024, in *National Small Business United, d/b/a the National Small Business Association, et al v Yellen, et al*,[22] the United States District Court for the Northern District of Alabama held that the CTA was not a proper exercise of Congress' enumerated powers and is therefore unconstitutional. FinCEN issued a press release on 4 March 2024 stating that it would comply with the court's order and would not enforce the CTA against the plaintiffs in that case.[23] The Department of Justice has also filed a notice of appeal regarding the case.[24] The CTA is facing another constitutional challenge in the Western District of Michigan.[25] Nevertheless, until there is further resolution on the constitutional issues, and as at the time of writing this article, the CTA is still good law with respect to millions of existing and newly formed entities in the United States.

A reporting company is defined as a corporation, partnership, LLC or other similar entity that is created by the filing of a document with a secretary of state or a similar office, or a foreign entity that files a document with a secretary of state or similar office to do business within the United States.[26] Twenty-three types of entities are specifically excluded from the definition of reporting company.[27] The exemptions are for entities that do not pose significant risks such as large operating businesses, publicly traded companies, bank and bank-type entities, insurance companies and other regulated businesses. Private trusts are not reporting companies, however, certain parties to private trusts will be reported as beneficial owners when the trust has an ownership interest in a reporting company, or when individuals associated with the trust exercise substantial control over the reporting company.

Each reporting company is required to report its beneficial owners, or the individuals who exercise substantial control over the reporting company or who own or control not less than 25% of the ownership interests of the entity.[28] Reporting companies formed after 1 January 2024 also are required to report their company applicants, or the individual (or individuals) who files or who directs the filing of the document to form the reporting company with the state.[29]

Each reporting company must report the following:

- name (including DBA);
- business address;
- jurisdiction of formation; and
- unique identification number.

For each beneficial owner and company applicant, the reporting company must provide the following:

- legal name;
- date of birth;
- residential address for beneficial owners;
- business address for professional company applicants, and residential address for other company applicants; and
- unique identifying number from an acceptable identification document or FinCEN identifier.

Reporting companies in existence prior to 1 January 2024 must file their initial reports under the CTA by 1 January 2025.[30] Reporting companies formed (for domestic) or registered (for foreign) on or after 1

January 2024, must file their initial reports within 90 days after formation or registration.[31] If there is a change in beneficial ownership information, the entity will have to file an updated report within 30 days of the change.[32] There are civil and criminal penalties for failure to file required reports.[33]

Lawyers will have an important role to play in connection with the CTA and the Final Disclosure Regulations. In many situations, clients will expect lawyers to offer advice about an entity's reporting obligations, or whether an exception applies, or will be asked to assist clients with the identification of beneficial owners, particularly in complex ownership structures or in situations in which trusts or other forms of ownership are involved. Lawyers and their staff who assist clients with entity formation will also sometimes be the company applicant for a reporting company. Thus, Congress and FinCEN have impelled American lawyers to have a role in the US AML and CFT transparency objectives by implementing the broad-based CTA and Final Disclosure Regulations in a legal framework in which lawyers are invariably involved.

Efforts to gather information regarding certain real estate transfers – notice of proposed rulemaking (NPRM) anti-money laundering regulations for real estate transfers[34]

While the CTA is a specific amendment to the BSA, FinCEN has taken, or proposes to take, a number of other actions pursuant to its regulatory authority which, while not directed at American lawyers, will have an unavoidable impact on lawyers representing private clients in their estate, tax and associated planning. The most recent of these pertains to the identification and reporting of certain real estate transfers. On 16 February 2024, FinCEN issued the Real Estate NPRM seeking public comments regarding potential regulations under the BSA that would require reporting of specific information by certain persons regarding a broad category of non-financed real estate transactions.[35] The Real Estate NPRM followed the issuance on 2 December 2021 of an Advanced Notice of Proposed Rulemaking (the ANPRM) broadly addressing the same topic.[36]

If enacted in substantially its current form, the Real Estate NPRM will result in a dramatic increase in the flow of information to FinCEN, all without any particular risk-based analysis, and will result in many cases in the imposition on American lawyers and others involved in certain real estate transfers the obligation to file what the FinCEN refers to as a "streamlined version of a Suspicious Activity Report … ".

The NPRM is an outgrowth of, and will be a replacement for, the Residential Real Estate Geographic Targeting Orders or GTO programme.[37] Under the GTO programme, which was initiated in 2016 and extended and expanded a number of times, title insurance companies in certain geographic areas are required to file reports with FinCEN when they are involved with residential closings in which title is transferred to certain legal entities, the purchase price exceeds certain limits and there is no institution providing financing that has BSA obligations. In short, the title companies are to report the beneficial owners of purchasing entities for which there is no regulated financial institution involved. In the preamble to the Real Estate NPRM, FinCEN suggests that the GTO programme has resulted in a significant amount of information useful to law enforcement, suggesting that non-financed real estate transactions are an effective technique for identifying money laundering.[38] Given the success of the GTO programme, FinCEN proposes to expand quite dramatically the scope of those real estate transactions that must be reported and the identification of those who must file such reports.

The 2021 ANPRM included two sections, one addressing the transactions to be covered and the other asking whether those involved in real estate transactions should be governed by bank-style AML requirements (STR, CDD and associated record keeping, NTO, AML programme, etc). The Real Estate NPRM does not include the latter requirement. What FinCEN instead suggests is a streamlined BSA, with transaction reporting of all covered transactions but no obligation to investigate or follow up on what is reported. In effect, instead of STR, FinCEN proposes to have all covered transactions reported, in some ways parallel to the CTA which requires reporting by all covered entities. There is no risk-based assessment.

Given the success of the GTO programme, FinCEN proposes to expand quite dramatically the scope of those real estate transactions that must be reported and the identification of those who must file such reports.

There is a complex 'cascade' of reporting persons and a number of technical issues around determining who has the obligation to report.

FinCEN has concluded that residential real estate transfers to trusts and certain legal entities, even those for no consideration, pose a sufficient risk to merit monitoring in all cases.

Some of the highlights of the Real Estate NPRM include:

- A report must be filed regarding reportable transfers of residential property by a reporting person to transferee entities and transferee trusts.[39]
- The rule applies to residential property (including land that is so zoned or permitted) and co-ops; notably, in the ANPRM FinCEN asked about commercial property but the Real Estate NPRM does not (unless part of a qualified residential property). The property must contain four or fewer residential units so the rule will not apply to apartment buildings. There is, however, no acreage limitation so it would apply to the transfer of a 10,000 acre ranch with a single family ranch house.[40]
- There is no geographic limitation as there is in the GTOs.
- The rule only applies to transfers that do not include financing arrangements in which a bank or other regulated lender has a role.[41]
- Exceptions include:
  - easements;
  - transfers "resulting from the death of an owner . . .";
  - transfers incident to divorce or bankruptcy; and
  - transfers with no reporting person (which probably includes situations where there is no agent, title insurance, or similar actors and the deed was not prepared by a lawyer or other professional).[42]
- There is a complex 'cascade' of reporting persons and a number of technical issues around determining who has the obligation to report. The cascade, setting forth the priority for determining the reporting person, is as follows, provided that the person must be "engaged within the United States as a business in the provision of real estate closing and settlement services":
  - the person listed as the closing or settlement agent;
  - the person who prepares the closing or settlement statement;
  - the person who files a deed for recording;
  - the person who underwrites title insurance;
  - the person who disburses the greatest amount of funds in connection with the transfer, including a lawyer's trust account;
  - the person who provides "an evaluation of the status of the title", which presumably means a title searcher; and
  - the person who prepares the deed or other instrument of transfer.[43]
- Transfers included in this reporting regime are transfers to:
  - transferee entities which are defined as a "person other than a transferee trust or an individual". Obviously, "person" takes a broad definition and for these purposes it includes most corporations, partnerships, LLCs and similar entities (akin to the CTA) with a variety of exceptions. Most of the exceptions are similar to the listed exceptions in the CTA (regulated financial entities, mostly) but importantly, there is no 'large company' exception, no accounting firm exception, and no exception for transfers to charitable entities; and
  - transferee trusts which includes all common law trusts (with rarely applicable exceptions). Notably, it includes *inter vivos* (revocable and irrevocable) and testamentary trusts.[44]
- The information about the transferee (entity or trust) is similar to the information required under the CTA. In fact, there are several cross-references to the CTA in the beneficial ownership information (BOI) arena. This includes for trusts the information that must be provided regarding trustees and similar fiduciaries, settlors of revocable trusts and an individual who is the sole individual entitled to receive or withdraw income or principal from the trust. In the category of entities, the look through to the beneficial owners is a direct cross-reference to the CTA beneficial ownership regulations.[45]
- There is no dollar limitation on reportable transfers. The Real Estate NPRM specifically includes otherwise reportable transfers for no

consideration, including gifts. Moreover, while bank financed transactions are not reportable, if there is financing by an entity or individual with no AML obligation, the report must include information about that arrangement.
- The Real Estate NPRM includes the details of what is to be reported in a transaction report including CTA-style personal information about the people involved and details regarding the actual transaction regarding both transferor and transferee, etc.[46]

As is the case with all federal rulemaking, there is a detailed process under which FinCEN is required to evaluate the comments filed by the public; in the case of the Real Estate NPRM, the comment period closed on 16 April 2024. Over 600 comments were received.[47] Eventually, it is expected that FinCEN will issue a final rule, possibly modified as a result of public comments. Only when the final rule becomes effective will it be clear what impact it will have on private client lawyers but what is clear is that, for now, the Real Estate NPRM does not exclude lawyers from the reporting cascade. A number of those who commented on the Real Estate NPRM noted the likely violation of a lawyer's ethical duties to maintain client confidences under MR 1.6.[48]

As will be clear from the other sections of this article,[49] for the four nations whose legal structures are described, and by extension for most other nations, particularly for the 35 other national members of FATF, the battle against money laundering and terrorist financing is a critical public policy, requiring participation not only by governments but also by many actors in the economic life of those nations. The United States, as is reflected in the results of a number of mutual evaluation reports, has implemented by statute and regulation most of FATF's 40 Recommendations, particularly those imposing STR, CDD and NTO obligations on banks and many other financial actors. Unlike most other nations, however, the United States has been unable or unwilling to impose those obligations on lawyers who are otherwise described in Recommendations 22 and 23.

American lawyers have so far made a convincing case that as a self-regulated profession, with important ethical obligations to their clients and to the profession writ large, their role in combatting money laundering and terrorist financing can best be addressed through the adoption and implementation of guidance under the Model Rules of Professional Conduct. At the same time, the US Treasury, acting under the authority of the Bank Secrecy Act, has dramatically expanded the collection of potentially relevant information through the Corporate Transparency Act and, eventually, through the final version of the Real Estate NPRM regarding the reporting of certain real estate transfers. Those efforts, designed to comply with FATF's Recommendation 24, will result in the collection of information about potentially millions of entities and transfers, not under a risk-based analysis but because of a concern that those entities and transfers pose some risk of misuse by criminals. Inevitably, both efforts will result in increased obligations on American lawyers, not because they are "gate-keepers" in the Recommendation 22/23 rubric, but because they provide legal services to clients whose entities and/or transactions are viewed by the US Treasury as worthy of supervision.

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21 31 CFR Part 1010.380(b)(1)(i), 87 Fed Reg 59592. For more depth on the Corporate Transparency Act and the Final Disclosure Regulations, see Glenn G. Fox, Raj A. Malviya, Michael A. Breslow and Kevin L. Shepherd, "Joining the Global Community in the Fight Against Financial Secrecy: Congress Enacts the Corporate Transparency Act to Mandate Beneficial Ownership Reporting in the United States" (2022) 48 ACTEC LJ 49.
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33 31 USC §5336(h)(3).
34 Immediately prior to the submission of this article for publication, on 29 August 2024, FinCEN issued a final rule regarding reporting requirements for non-financed transfers of residential property to certain specified legal entities and trusts. Although a more fulsome summary of the final rule will be provided in a forthcoming issue of this article, it is important to note that American lawyers continue to be included in the 'cascade' of persons required to submit reports of certain real estate transfers to entities and trusts. 89 Fed Reg 70,258 (29 August 2024), www.federalregister.gov/documents/2024/08/29/2024-19198/anti-money-laundering-regulations-for-residential-real-estate-transfers.
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38 Real Estate NPRM, p12426.
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40 Prop Reg 31 CFR §1031.320(b)(1). Real Estate NPRM, p12466.
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46 Prop Reg 31 CFR §1031.320(e), (f). Real Estate NPRM, pp12468–70.
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48 *Id*.
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Definitely? Maybe?

Sophie Dworetzsky

Yes, an era-defining album, but also a rather apposite summary of many aspects of the proposed new Foreign Income and Gains (FIG) regime in the United Kingdom. There will definitely be change, and there may be individuals who will benefit from and welcome the FIG regime. However, a much bigger "maybe" is whether the new regime will be globally competitive, and will work for the United Kingdom in raising tax revenues and attracting inward investment. Many advisers and other experts are deeply concerned that unless there is a change in direction, the United Kingdom's non-dom population, and all the investment and business acumen that they bring to the United Kingdom, will simply fade away.

What's the story?

The abolition of the remittance basis of taxation was announced in the budget delivered by Jeremy Hunt under the previous Conservative government on 6 March 2024. The Labour Party (then in opposition) had for some time been agitating for the abolition of the remittance basis, and indeed it was a commitment in the Labour Party manifesto.

The Labour Party then won the General Election on 4 July. It is therefore no surprise that when the Treasury published a policy paper on the taxation of resident non-domiciled individuals (RNDs) on 29 July, representing the new government's position, that paper confirmed the abolition of the remittance basis as of 6 April 2025. It is notable that the policy set out by the prior government on 6 March was adopted, but with important additions.

The key elements of the proposals are set out below, in fairly brief form, before I set out a constructive critique and suggestions for improvement.

The masterplan

As a brief reminder, under the remittance basis, RNDs who are not deemed domiciled in the United Kingdom are not taxed on foreign income and gains, unless remitted to the United Kingdom. An RND becomes deemed domiciled after 15 out of 20 years of UK residence, and can establish a protected trust before that time. Such a trust can offer ongoing deferral of tax on foreign income and gains.

RNDs who are not deemed domiciled in the United Kingdom are generally exposed to inheritance tax (IHT) only with respect to UK assets. RNDs who are deemed domiciled are exposed to IHT with respect to worldwide assets, if personally held. However, non-UK assets settled into an excluded property trust (EPT) before the settlor becomes deemed domiciled remain exempt from IHT.

The changes

The remittance basis of taxation will be abolished and replaced by a new residence-based FIG regime under which non-UK income and capital gains will be exempt from UK taxation. The precise eligibility criteria for the FIG regime remain unclear. However, seemingly an individual who has been non-UK resident for at least 10 consecutive tax years as at April 2025 will qualify for four years of the FIG regime, whereas an individual who has been non-UK resident for at least 10 consecutive years as at April 2024 but has been UK resident for one tax year as at April 2025 will qualify for three years of the FIG regime (and so on).

It appears that under the new regime trusts will not provide any income tax deferral benefit unless (broadly) the settlor and any spouse are excluded. Moreover, it appears that trusts will not provide any CGT deferral benefit unless a large group of persons is excluded, including the settlor, any spouse, any children of the settlor, and any grandchildren of the settlor. By contrast, under the current rules, trusts settled by an RND who was not deemed domiciled at the time typically provide ongoing tax deferral benefits, even after the settlor has become deemed domiciled, and regardless of who is a beneficiary or potential beneficiary of the trust.

IHT will move from a domicile-based system to a residence-based system. A taxpayer's non-UK assets will be subject to IHT after 10 years of residence and will remain so for 10 years after the individual has ceased to be UK resident.

Existing EPTs settled by RNDs will no longer provide ongoing protection from IHT for non-UK assets held within them.

The removal of the benefits of EPTs is the most dramatic difference between the proposals announced on 6 March and the policy paper released on 29 July. Under the 6 March proposals, it appeared that there would be scope to establish EPTs up to 5 April 2025. That is clearly no longer the case.

It appears that there will be a temporary relief which will allow former remittance basis users to bring foreign income and gains into the United Kingdom at favourable rates. It is unclear how long this relief will apply for, or (crucially) what tax rate, or rates, will apply. The previous government had proposed a 12% rate which would have applied to

remittances of both foreign income and foreign gains.

As yet, there is no draft legislation. It is also to be noted that Keir Starmer announced on 27 August that the forthcoming budget on 30 October would be "painful". It is hoped that the new rules will not be even harsher than previously trailed, in a misguided attempt to raise revenue.

Some might say

Some, myself included, might say that the FIG regime was proposed without due consideration to whether it will be competitive, credible and commercial.

Considering those objectives in turn, there is no denying that the United Kingdom operates in a world of tax competition. Many current RNDs are actively considering relocating to Switzerland or Italy, both of which offer attractive regimes. Notably, Italy offers a 15-year period in which a flat tax rate applies, and the Swiss forfait regime is not time limited. Viewed alongside these rival regimes, the duration of the FIG regime looks inadequate.

Addressing the question of whether the FIG regime is a credible replacement for the remittance basis, the answer is no. It offers a very short four-year window, which is only likely to be attractive to individuals who are looking for a short-term tax-free 'pit stop'. Such individuals may become resident in the United Kingdom to sell a foreign business, without tax, and then leave. It is hard to see how the United Kingdom will benefit from these ephemeral residents, who will pay little or no tax and will not put down any roots. There is scant evidence that individuals will be attracted to move to the United Kingdom by the special regime which will apply in the first four years of residence and will then, out of inertia, remain UK resident as arising basis taxpayers. Indeed, this is psychologically implausible.

As to whether the FIG regime is commercial, if one assumes the objective is to raise revenue, again the answer is no. As set out below, there is a real risk that it will have a negative revenue effect.

It is worth reminding ourselves that much of the genesis of the current focus on the abolition of the remittance basis is a University of Warwick report, *Reforming the non-dom regime: revenue estimates* (Arun Advani, David Burgherr and Andy Summers, September 2022), which estimated that abolishing the remittance basis would raise £3 billion. However, importantly, the report was based on the estimate that only 0.3% of RNDs would leave if the remittance basis were abolished, and that if actually 4.5% of RNDs were to leave the United Kingdom as a result of the abolition of the remittance basis the policy would not actually raise revenue.

While I cannot comment in any detail on the methodology and numerical analysis on which the report is based, three points must be made. The first is that the report places great weight on the fact that very few RNDs left in response to the tax changes in 2017, which introduced the concept of deemed domicile for the purposes of income tax and CGT. Those changes were not remotely comparable to the changes that are proposed now, being far less draconian. Indeed, the 2017 legislation was deliberately designed so that well-advised taxpayers could insulate themselves against many of the apparent effects of becoming deemed domiciled. The 2017 reforms were performative rather than substantive.

The second point is that there is recent data indicating that a large percentage of RNDs (one survey indicates as many as 98%) are considering reducing the length of time for which they will remain UK resident if the FIG regime is enacted as summarised above. Thus moving towards the counter-productive position contemplated in the report.

The third point is that the report focused primarily on revenue estimates and behavioural responses to the abolition of the remittance basis. The FIG regime goes considerably beyond this, and notably imposes worldwide IHT after 10 years of residence. Based on data sets I am aware of and conversations with clients, for a large number of RNDs this is unpalatable.

Slide away

The analysis above notwithstanding, there are some commendable elements of the FIG regime which should form the basis of a reworked regime if the United Kingdom wishes to attract and retain internationally mobile investors and entrepreneurs. These should be used as elements of a radically reworked special tax regime, sliding rather closer to an Italian-style flat tax regime.

There is much to commend the move away from domicile as a relevant factor for tax purposes and to move to a clear residence-based system. The focus

There is much to commend the move away from domicile as a relevant factor for tax purposes and to move to a clear residence-based system.

It is to be hoped that the opportunity to create a truly modern, competitive and revenue-generative regime will be seized, and that the United Kingdom won't look back and regret a lost opportunity.

on a residence-based system will enhance certainty of taxation, in light of the United Kingdom's very clear statutory residence test.

There is even more to commend the move to encouraging investment in the United Kingdom. It has long been a peculiarity of the remittance basis that RNDs are actively discouraged from investing in the United Kingdom, by the simple fact that remitting offshore income and gains onshore will trigger UK tax charges.

The two premises, of a residence-based system and one that encourages inward investment, should be used to form the basis of a new regime. This could either replace the FIG regime, or sit alongside it as a parallel regime.

To achieve this I would propose three main elements:

- First, the proposed four years is a very short time. It would seem rational for the United Kingdom to wish to ensure investors and entrepreneurs make their home here for a longer period of time. Currently, a RND becomes deemed domiciled after 15 tax years of residence, and it would be sensible to allow someone to benefit from the special tax regime for 15 years. Importantly, 15 years also provides a reasonable time for a child to complete his or her schooling.
- Second, a flat tax regime would combine certainty for taxpayers with the ability for the government to raise a substantial and relatively predictable stream of tax revenue. Clearly, the regime should be available only on payment of an annual fee, which need not be a set fee but could vary according to wealth levels. The rate and manner of calculating the charge would need to be carefully considered but there is an opportunity to raise significant tax revenues through such a charge.
- Third, extremely importantly, there should be alignment of the duration of the special tax regime and the point at which worldwide assets are exposed to IHT. If individuals can come to the United Kingdom to become resident for a 15-year period, paying a predictable amount of tax and without IHT exposure on their non-UK assets (or non-UK assets held by trusts which they have settled), the United Kingdom will be able to offer a premium, compelling alternative to Italy and Switzerland.

Don't go away

The recommendations above should form the basis of the special tax regime. Without them there is a real and valid concern among advisers that existing RNDs will cease to be UK resident and that, equally importantly, the international individuals who regularly come to the United Kingdom and contribute so importantly to its economic dynamism, creativity, diversity and energy will choose to make their home elsewhere. This concern is confirmed by survey data showing that a large proportion of RNDs will curtail their UK residence if the proposed reforms are enacted 'as is'.

It is hoped that there is the political will to look at the proposals afresh, as suggested in this article.

Don't look back in anger

The FIG regime has elements that can and should be included in a reworked special tax regime. Absent such amendment the very real risk is that RNDs will drift away from the United Kingdom, and potential new residents will select other jurisdictions such as Italy, Switzerland or the United States.

It is to be hoped that the opportunity to create a truly modern, competitive and revenue-generative regime will be seized, and that the United Kingdom won't look back and regret a lost opportunity.

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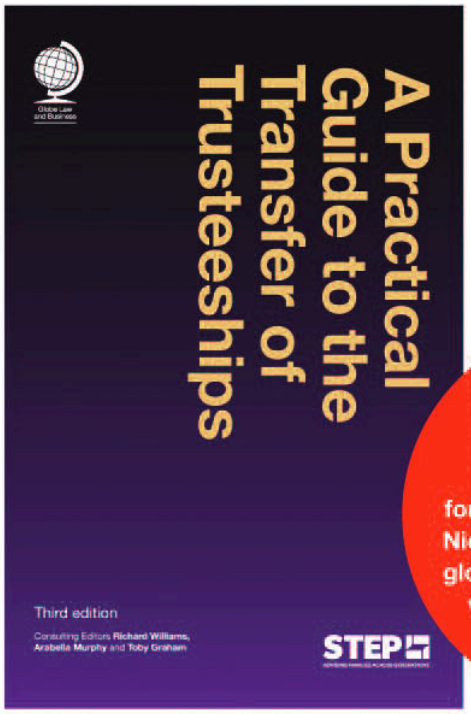

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Delivering a multinational family philanthropy strategy – tools for borderless giving

Brooks Reed

The goal: a seamless philanthropic journey that centres on meaning and impact

As professionals who advise philanthropists, our goal should be to provide clients with the tools they need to engage in meaningful philanthropy that allows them to achieve what Peter Karoff describes as the "full alignment of their vision, passion, and interests"[1] – while also being responsible stewards of their wealth by seeking full tax advantage for their giving. But in a world in which demand for philanthropy advice is rising among high-net-worth individuals (HNWIs), only 5% of independent financial advisers, wealth managers and planners expressed confidence in advising their clients on their charitable strategies.[2] To most effectively enable high-impact family philanthropy, advisers must support both the strategy and delivery of charitable programmes – tasks made more challenging when attempted across borders.

And as wealthy individuals and their families travel, settle, get married, raise families, invest and retire across borders, their financial situations become increasingly more complex. Often they end up with tax obligations in two, three or more countries on a scale at which specialised financial and tax planning is vitally necessary. By the time this becomes an issue, many HNWIs will already have developed a habit of charitable giving, perhaps as part of their tax strategies as they built or inherited their wealth: over 60% of UK HNWIs surveyed recently said that giving to charity was an important part of their life.[3]

To most effectively enable high-impact family philanthropy, advisers must support both the strategy and delivery of charitable programmes – tasks made more challenging when attempted across borders.

Clients living as expats, or those experiencing multiple tax liabilities for the first time, may encounter a charity that cannot accept their money, or at the very least cannot issue them a receipt that allows them to claim the benefits in the countries their tax strategies require.

As an example, in the United States tax deductions are limited to donations made to entities exempt under Section 501(c)(3) of the Tax Code. If a donor wishes to support a charity outside the United States that is not a registered Section 501(c)(3) organisation, they can do so but they will not receive a receipt that allows them to claim the allowable tax deduction. In our work, we often speak to donors who have given directly to a non-US charity and are looking for a tax benefit. Unfortunately, in that case their gift receipt will not qualify them for a deduction.

Now consider a HNW US citizen who has relocated to London and has a history of extensive charitable giving. After their move, they are now taxed under both the US citizenship-based taxation system and the HMRC regime applicable to those domiciled in the United Kingdom. This individual has assets in the United States that they want to donate to a charity in their new neighbourhood registered with the UK Charity Commission. While that donation may qualify them for a UK deduction, they would not be able to claim any benefit for the gift in their IRS returns, even though the work they are funding would be considered charitable if the charity applied for exempt status in the United States.

And then, say that in addition to their US and UK assets, they also held investments in Canada and France. If they wanted to deploy their philanthropic capital directly from each of those four countries to a single charity or a single set of charities in the United Kingdom, they would then need to give up all tax benefits to their gifts in each of those other three countries unless they leveraged additional giving vehicles.

When wealth is distributed among different tax jurisdictions, the process of giving money away becomes more complicated – and the complexity increases exponentially with the addition of each new country in which significant wealth is invested or

held. Differing charitable deduction laws, rules around how charitable capital can move across borders and restrictions on the overall use of charitable assets can create a web of dependencies that leads to less money being given away, or being given away at a tax disadvantage.

Family office staff should know that, while these challenges are real, there are solutions to be found. By partnering with the right type of foundations in various countries, it is possible to build the infrastructure necessary to support global HNW philanthropic strategies while achieving the maximum amount of tax efficiency.

Using charities as intermediaries

While a charity in a foreign country is unable to provide a receipt that allows for domestic tax benefits, many countries have rules that allow charities to grant funds to organisations in other countries as long as they meet certain criteria. In these cases, the charities that function as intermediaries are able to steward clients' donations and oversee their delivery to the foreign grantee. These intermediaries can issue valid tax receipts in the source country and then distribute funds in the form of grants to the intended beneficiaries abroad, supporting a single global philanthropic strategy and taking full advantage of a family's assets, wherever they may be held.

Donors with exceptional wealth may be able to incorporate family foundations in various jurisdictions, or they may work with organisations dedicated to managing donations and grants to arrange for sponsored funds in an array of countries. Overall, the limiting barrier to this strategy succeeding is the laws in each country that govern cross-border funding. The following is a brief primer on some common examples of those restrictions:

- The United States is generally considered to have the most flexible tools for substantiating a grant to a non-exempt grantee. Through exercising equivalency determination (ED) or expenditure responsibility (ER), US foundations are able to fund a wide variety of organisations and projects around the world. Equivalency determination even allows for unrestricted grants in the right conditions, without the need for ongoing reporting to the granting organisation.
- The United Kingdom is also a very flexible jurisdiction, but unlike the IRS, HMRC does not define an equivalency determination tool or allow charities to grant to non-charities in an unrestricted capacity. Any grants must be governed by a specific agreement and the grantor must collect specific reports for the lifetime of the grant. While this is closely similar to the US expenditure responsibility process, the two may not be combined when receiving grants from a US and UK donor.
- Canada allows for charities to fund foreign projects, but the CRA does not allow beneficiaries of Canadian charitable funds to commingle those funds with donations from any other donor. Until 2023, Canadian charities were not even allowed to make grants to non-qualified donees; it was only after the passage of the 2022 Budget Act that a tool was created to allow for international grants with an associated agreement and reporting requirement.
- French charity law functions similarly, except grants from French charities may only be made for specific purposes in specific countries; for example, only for projects in the European Union or for humanitarian purposes.[4]
- Most other EU countries either do not offer significant tax benefits for international grantmaking or prohibit charities registered under their tax regime from giving abroad (or, more commonly, to charities registered outside the European Union).

While this set of rules is complex, there is reason to hope it will be simplified soon – at least within Europe. The European Union is pursuing a policy proposal to create a new type of entity registration, the European Cross-Border Association (ECBA), which would compel member states to recognise registered organisations across the customs union and allow them the benefits associated with the type of entity that best matches a central set of criteria.[5] In effect, this would create an EU-wide charity registration system that would streamline philanthropy from and among member countries.

While a charity in a foreign country is unable to provide a receipt that allows for domestic tax benefits, many countries have rules that allow charities to grant funds to organisations in other countries as long as they meet certain criteria.

Philanthropic strategy is a vital process for a donor client to participate in, as they identify the change they want to make, choose the charity partners that will enable that change and define the best programmes to make that change real.

Regardless of the complexity of the regulatory frameworks involved, working with an intermediary can be a cost-effective way to leverage existing knowledge and structures to enable clients' charitable giving.

Partnering with infrastructure organisations to support a multinational philanthropic strategy

By understanding that each tax jurisdiction in which a family has wealth will have complicated – and often competing – rules for how charitable giving can be done across borders, family office professionals should strongly consider partnering with an intermediary charity, or set of charities, to support a multinational philanthropic strategy. While tax benefits and compliance are important considerations, philanthropic clients will be focused on what we (their teams) can enable for them, not necessarily how that will be made possible or advantageous. These types of tools and solutions allow us to make new impact possible by getting more funds into the hands of the charities that need them most, while supporting a meaningful and authentic experience for our clients. Applying these concepts to an international charitable strategy, there are two levels of challenges to address: strategy and delivery.

Philanthropic strategy is a vital process for a donor client to participate in, as they identify the change they want to make, choose the charity partners that will enable that change and define the best programmes to make that change real. All levels of engagement with this strategy process should be encouraged and celebrated, and regardless of the sophistication of the strategy involved, clients will most likely see this as their primary engagement with their philanthropy.

When working in these complex regulatory environments, the delivery of those strategies is dependent on a funding structure that gets resources to the charities who need them while also protecting the client's wealth and tax priorities. Family office staff should seek all possible tools to realise the impact of the philanthropic strategy. By leveraging multiple intermediaries, in conjunction with family foundations, donor-advised funds, or charitable trusts across the world, advisers can assemble a toolkit that has a variety of partners, processes and transactions, but that also supports a unified vision for philanthropy and impact.

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1 See www.essentialleadership.us/the-philanthropic-learning-curve/.
2 "Advising the giving generation", www.professionaladviser.com/how-philanthropy-advice-could-head-off-a-client-crisis.
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The intersection of philanthropy and technology and its impact on family offices

Mary E Klein

In faith and hope the world will disagree, but all mankind's concern is charity.
JRR Tolkien (www.bookey.app/quote-author/jrr-tolkien)

Introduction

Fintech (financial technology)[1] is a pivotal force which has reshaped banking and investment, and in its intersection with philanthropy, will shift philanthropy from a passive to active undertaking and reach a broader spectrum of people. The opportunity to redefine the philanthropic sector is vast given that according to the National Philanthropic Trust, charitable donations amounted to nearly half a trillion US dollars in 2022.[2]

Fintechs are companies that rely primarily on technology and cloud services and less on physical locations to provide financial services to companies. Almost half of consumers used fintech products in 2021, such as peer-to-peer payment services and nonbank transfers. Capital raised by venture capital funds for fintech firms escalated from US$19.4 billion in 2015 to US$33.3 billion by 2020.[3]

Fintech is accelerating shifts in donor bases by allowing donors to make contributions more frequently and in smaller amounts.[4] This democratisation of philanthropy offers new models for engagement and impact that challenge traditional ways of charitable giving.[5]

Summary

Most family offices engage in philanthropy for three reasons: to educate the next generation to build a legacy; to use tax advantages associated with philanthropy to better their financial management; and to advance social change to alleviate social inequality.[6] Managing family office philanthropy is complex given the various priorities such as maintaining transparency in donations to recipients, complying with particular corporate structure giving requirements, properly managing cash flow to have it available for gifts, and multi-year tracking of donations to assess trends in their philosophies of giving.[7]

This article discusses current trends and innovations in the emerging intersection of philanthropy and technology, how technological innovations may provide new solutions to problems in this area, and how family offices can play a strategic role in creating a new era of philanthropy.

Before diving into a discussion of trends in fintech and philanthropy, it's useful to understand the technological innovation impetus underlying the resulting developments.

Blockchain technology enhances transparency and trust in philanthropic transactions by allowing donors to track the journey of their contributions in real time and confirm the intended destination. AI systems can analyse datasets, identify trends and needs, and allow donors to contribute where they can make an impact consistent with their philanthropic goals.

AI-driven platforms may optimise donor engagement through personalised interactions and match philanthropic efforts with individual donors' values and interests. Stories such as GiveDirectly, which mobilises payment technology by allowing donors to send money directly to impoverished people, illustrate the transparency and efficiency facilitated by blockchain technology and that overcoming obstacles is well worth the effort.

The ramifications of technology in the philanthropic space include connecting donors and recipient organisations more productively and efficiently, the way that Amazon connects buyers and sellers in a for-profit marketplace. Further, technologies such as the Impact Genome Registry enable the independent reporting and verification of the impact of social programmes, social enterprises, corporations and governments worldwide.[8]

Technology challenges faced by nonprofits

Nonprofit institutions face enormous challenges, such as having the financial resources to adapt to technological change.[9] Information technology has changed the work environment in dramatic ways. It has created new opportunities for and new costs of doing business. Information projects are expensive, require significant training and tend to become obsolete quickly.[10]

Innovation and efficiency are needed in the nonprofit industry, and organisations are often more focused on their mission than marketing. Manual work and redundancy could be eliminated by

increased adoption of technology to improve efficiency.[11]

The ability for larger nonprofits to absorb larger amounts of fixed costs of new technology and access donor bases of local operating charities are two ways that technology puts smaller nonprofits at a disadvantage. The democratisation of philanthropy through branding is a commercial/technological dilemma for arts organisations and educational institutions that involves considerations about aesthetics, creative control, packaging of knowledge and intellectual property rights. It may also create a better system for giving and fostering effective partnerships resulting in better decision making. Adopting new technology may seem daunting and can be rebranded as a necessary tool for what is already being done. It is not to replace existing staff or to change the mission of the not-for-profit. There should be an evangelisation of how such technological development programmes can enhance the reach and impact of existing marketing programmes, providing additional information and analytics (eg, behaviour of donors and predict where their next philanthropic donation will be made).[12]

How technology can fix philanthropy brokenness

The funding process for non-profit organisations is unsophisticated. Due to perceived costs and desired flexibility, a small percentage of charitable donations are transacted online versus traditional methods such as paper cheques and wire transfers. Over the next decade, the expansion of technology in the philanthropic space will lead to some major shifts:[13]

- financial technology will bring more scale and capabilities, rapidly lowering costs and hassle;
- technology will usher in an unprecedented era of coordination and connection among donors; and
- data, machine learning and AI will enable leaner, higher-trust giving decisions.

Online giving platforms will advance capabilities and achieve greater scale, lowering transaction costs. When giving moves online, it will bring greater efficiency and transparency as well, fostering clearer emphasis on the impact and relationship-building involved in giving, not just the administrative steps and costs.

Today, giving is private. Technology will facilitate ways for donors to collaborate, such as among family offices, where charitable resources can be pooled together seamlessly and anonymously where needed.

As better predictability of matching between donor and charity emerges, donors can decide with whom to best invest their relationship time and capital.

Technology trends shaping the future of giving[14]

The following trends can shape how family offices give in the future, and these developments will provide more transparency, efficiency, and impact measurement. As a result, family offices may focus more of their time on developing effective philanthropic missions.

Technology used to simplify operations and limit costs

Charities and charitable giving entities, such as donor-advised funds and private foundations, can use technology to automate complicated processes and workflows similar to what is done by for-profit entities. AI tools can aid in coaching the not-for-profit on engagement discussions with potential or existing donors. The donation relationships are still built with people, but the tools can enhance the conversation and talking points to make it far more likely they will donate. The tool will even propose dollar amounts that are most likely to be accepted by donors.[15]

Provide transparency through public platforms and technology

Charities with greater transparency garner 53% more contributions[16] since people are inclined to donate more when they can see evidence of the impact of their money. Blockchain is a promising technology that may be used not only to facilitate cryptocurrency transactions but also publicly track and share foundation contributions.

Tapping social networks to accelerate momentum and visibility

Crowdfunding platforms such as Mightycause and social media campaigns have democratised

The ability for larger nonprofits to absorb larger amounts of fixed costs of new technology and access donor bases of local operating charities are two ways that technology puts smaller nonprofits at a disadvantage.

Trend	Benefit	Tech to watch
Use automation to simplify operations and limit costs.	Cloud-based digital processes reduce overheads and save time.	• Virtuous – nonprofit marketing automation • Keela – donor management • MoneyMinder – nonprofit accounting software • Limelight – FP&A software
Provide transparency through public platforms and technology.	Clarity provided about where and how money is being used to boost donor confidence that their contributions are having the intended impact.	• Hexa – blockhain for social impact • Candid – data and tech for nonprofits and funders • Socialsuite – impact measurement for nonprofits
Tap social networks to accelerate momentum and visibility.	Crowdfunding and social media campaigns give more visibility and engagement between donors and recipients.	• Cause – civic technology app • CauseVox – digital fundraising • GiveSmart – mobile bidding and fundraising
Attract next-gen donors through the latest platforms and apps.	Younger donors with a strong interest in philanthropy seek tech-centric ways to give easily.	• The Giving Block – civic technology app • Cauze – digital fundraising • Pinkaloo – mobile bidding and fundraising • DonorPerfect – donor engagement
Build a strategic infrastructure and vendor network.	Required minimum distributions can be automated to avoid incorrect calculations.	• Dataro – AI-powered donor scoring • Impactfully – foundation management software • Whole Whale – B Corp digital agency
Improve the grantee experience through an omnichannel approach.	Digital payment methods will help grantees access capital more quickly for their cause.	• TechSoup – nonprofit tech marketplace • Submittable – social impact software • Foundant Technologies – software for grantmakers and grantseekers

philanthropy by making it easier for the general public to collectively effect change at levels previously restricted to high-net-worth families and foundations.

The popular GoFundMe crowdfunding platform enables individuals and organisations to tell their stories and create a direct communication channel between donors and recipients. Associated social media campaigns highlight the cause or organisation on a more personal level with individual donors and drive traffic to the initiative.

Attract next-gen donors through the latest platforms and apps

Involving the next generation (NextGen) in charitable activities is a top priority for private foundations. 62% of foundations want to involve NextGen in philanthropic activities, and 35% cited that engaging NextGen is a significant challenge.[17] Innovation and technology enablement is important to engaging NextGen in philanthropy since they are accustomed to digital transactions and mobile technology. Generationally speaking, NextGen is more interested in philanthropy than predecessors. More than half of the younger affluent philanthropists surveyed said that they used technology to make their donations, with 26% using crowdfunding platforms and 19% making use of social media fundraising.[18]

Build a strategic infrastructure and vendor network

Philanthropic organisations must build the right tech stack and choose the best partners to maximise utility and return on investment. The ultimate solution depends on an organisation's needs, budget and technical expertise. Meeting cybersecurity protocols and regulatory compliance standards is important. Consulting with experts as to the right balance between use of tech-based tools, in-house management and functions managed by third parties may be necessary.

Partnerships and data sharing will be important in the exchange between AI tools. These large data lakes can be scrutinised by AI tools to predetermine the behaviours of existing donors, and donors yet to reach. Charities, in particular, know a lot of personal information about their donors, such as if they pay by cheque, are members of a sister organisation, attend events and at what price point, and are active volunteers. These meta data points are not readily

available yet but would be extremely valuable to the not-for-profit world. Also, there are general data protection regulations in place or in progress to alleviate potential concerns about privacy.

Improve the grantee experience through an omnichannel approach

Funders can proactively find ways to improve the experience of their grantees using technology. The application process can take as much as 21% of an employee's time.[19] In addition to improving the application experience, digital payment methods can expedite donations to grantees.

Philanthropic strategy[20]

To maximise effectiveness of giving, empowered by technology, it is important for the family office to determine its strategy. Givers can be categorised as follows:

- *Charitable bankers* are nonstrategic and review charities similar to bank loans without considering external context;
- *Perpetual adjustors* are always shifting and adding something without describing how it all coheres;
- *Partial strategists* differ from charitable bankers and perpetual adjusters and link their goals to external factors to develop their approach; and
- *Total strategists* have well-defined goals, take a proactive approach to their giving and do not just respond to requests.

Philanthropic giving is different than business strategy. The desired result can best be attained by working together and responding to continual feedback rather than an individual having sole control. Strategy in philanthropy, unlike in business, is about a shared approach across institutions and people and recognises the challenge of understanding and cause and effect.

Qualities of excellence in nonprofit organisations

Although technology can aid in the funding process, matching donors, and presenting transparency in donations, assessing whether a nonprofit organisation is fundamentally sound requires a qualitative assessment. The following seven pillars is a list of qualities to seek in a high-performing organisation before one contributes. High performance is defined as delivering over a prolonged period meaningful, measurable and financially sustainable results for the people or causes the organisation is in existence to serve.

- Courageous, adaptive executive and board leadership – principles include a strong board, assertive governors and stewards, and not just supports and fundraisers;
- Disciplined, people-focused management – leaders recruit, develop, engage and retain talent necessary to deliver on the mission;
- Well-designed and well-implemented programmes and strategies – leaders and managers select or design their programmes and strategies based on sound analysis;
- Financial health and sustainability – board and senior management establish strong systems for financial stewardship and accountability through the organisation;
- A culture that values learning – board, management and staff recognise they can't fully understand the needs of those they serve unless they listen and learn from constituents;
- Internal monitoring of continuous improvement – board, management, and staff work together to establish quantitative and qualitative indicators aligned with desired results; and
- External evaluation for mission effectiveness – leaders complement internal monitoring with external evaluations conducted by skilled experts.

Fintech and gifting mechanisms

Foundations use a wide range of vehicles and approaches to drive impact and meet their philanthropic goals. Aside from private foundations, philanthropists pursue giving with direct gifts (47%), donor-advised funds (19%), impact investing (9%), charitable trusts (7%) and planned or legacy gifts (6%).[21]

Financial advisers can help support people who are new to giving through 'phil-tech' and integrate philanthropic giving as part of financial planning.[22] Donor-advised funds and stock gifting are two strategies that are growing more popular. In addition, partnering with financial institutions that manage

To maximise effectiveness of giving, empowered by technology, it is important for the family office to determine its strategy.

401(k) and 403(b) retirement vehicles to include ethical company choices (eg, environmental, social, governance investing entities) could attract account holders.

Donor-advised funds

Donor-advised funds (DAFs)[23] are the fastest-growing philanthropic vehicle in the United States and reached over 1 million individual accounts in 2020. They are appealing due to flexibility, ease of use and accessibility.[24] Contributing to a DAF allows the charitable donor to take an immediate tax deduction without deciding what charity will receive the benefits. The funds remain in the DAF until the donor decides how they want them used, which can be months or even years. There is no deadline to distribute the funds to the charities waiting on them. In one situation, GoPro founder and CEO Nicholas Woodman gave US$500 million of his company's stock to the Silicon Valley Community Foundation. It was later reported there was no trace of the foundation or the US$500 million.[25]

Ethical causes or advisers (such as Green America or Aquinas Wealth) can help build portfolios that invest in account holders' causes, know the philanthropic behaviours of the companies and will also ensure that estate benefits include giving. These groups are also using AI to rebalance portfolios.

Stock gifts

An alternative to DAFs is the gifting of appreciated stock, which offers the highest tax savings to donors and results in larger gifts to nonprofits. In the United States, when donors gift stock, they can avoid capital gains tax and deduct the full value of the donation. Organisations such as DonateStock are democratising charitable stock gifting by making it accessible and easy for all nonprofits and donors.[26]

Summary and conclusion

Through fintech innovation in the philanthropic world, family offices can more easily identify charitable causes that resonate with their values and feel assured that their donations are being received and used wisely. The good done through giving affects the giver as well as the recipient. In offering our time, money and energy in the service of others' well-being, we enhance our own well-being as well. This paradox of generosity is a sociological fact, confirmed by evidence from quantitative surveys and qualitative interviews.[27] Prioritising charity is a compelling call to action, which forces those in a position to give to forget differences and collaborate to the benefit of humanity.

I would like to thank Melissa Thornton, who has served as a senior director at IT Business Partnering, Sinclair Inc; Megan Hyman, president and chief executive officer of the Dallas Community Jewish Foundation; and Steve Latham, co-founder and chief executive officer of DonateStock; for contributing their time and expertise to provide insight into an area which is complex and evolving.

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Family investment companies

Andrew Collins, Jamie McMurray and Julia Cox

Notwithstanding that the main rate of corporation tax is now at 25%, holding income-producing investments via a company (rather than personally) can still be attractive. In addition, an investment company structure also offers a way of making an outright gift, while still retaining a degree of control – something which may appeal to clients looking to transfer part of their wealth to their children or grandchildren. Such companies are called family investment companies (or FICs).

What is a FIC?

A FIC is a private UK company holding cash or investments for a family, with family members as its shareholders. It is no different from any other UK company. What is special about a FIC, however, are the bespoke elements of its articles of association and any shareholders' agreement, which define how specific family members will benefit in their capacities as shareholders with regards to voting rights, dividends and capital distributions.

How does a FIC work?

A FIC can hold any assets, for example, cash, a portfolio of shares, real estate or alternative investments such as works of art. 'Control' can be separated from 'economic value'.

In a typical scenario, parents incorporate and provide funds to a FIC. Subscribing for voting shares in a FIC enables the parents to retain control of investments and dividend flow through appointing and acting as directors of the FIC, and voting on shareholders' decisions. A separate class of share (or several classes of shares with different rights for each child) can then be subscribed for by the parents and gifted to the children. Such shares may be non-voting with restricted entitlements to dividends and capital. As such, the assets can be invested for the benefit of the whole family, with the older generation effectively controlling the investment strategy and distribution of profits.

Control and protection

With the older generation retaining full or significant control, the FIC offers inheritance tax (IHT) advantages of passing assets down to a younger generation, while retaining a high degree of wealth protection, both to protect the funds from the financial immaturity of the younger generation and potentially the shares from the claims of third parties in situations such as divorce and bankruptcy in certain advised ways.

Bespoke structure

The FIC's articles of association (a public document) and shareholders' agreement (a private document) offer a bespoke structure that can be tailored to suit a family's specific needs and concerns, which can be preferable in certain circumstances to trust structures where creation of those can (since 2006) incur an upfront IHT charge to the extent the value exceeds the creator's available IHT free nil rate band (currently up to £325,000). Parents can include provisions in these documents to specify different classes of shares, restrictions on transfers of shares (such as pre-emption rights), voting rights, entitlements to dividends and capital. Further provisions can be included to restrict the powers of the FIC (for example, to invest only in particular asset classes) or to allow for specific purposes (such as purchasing a property or not to sell certain assets).

Privacy

As with any other UK company, a FIC has to file certain documents which are publicly available at Companies House. These include:

- articles of association (any sensitive matters can be included in a 'private' shareholders' agreement);
- personal information (name, month and year of birth, nationality and country of residence) of directors and shareholders with more than 25% shareholdings in a FIC;
- confirmation statement (previously called the 'annual return') with a statement of capital, full list of shareholders and officers of the FIC; and
- annual accounts for a limited company (if the FIC is classified as a small company, only abbreviated accounts will have to be filed).

If the family wishes to maintain financial privacy, an alternative is to use an unlimited company, which is exempt from filing annual accounts at Companies House. It is important to note, however, that in this case, the shareholders would have unlimited personal liability for the debts and other liabilities of the FIC, albeit these may not be significant where the FIC is only holding investments, but not trading.

Taxation

Tax on creation

If the FIC is funded with cash, there should be no immediate tax consequences. The gifts of shares or

other assets in the FIC to family members will be 'potentially exempt transfers' for IHT purposes, which mean there will be no immediate IHT liability. The value of the gifted shares will be outside the donor's estate for IHT purposes, once the donor has survived seven years.

If assets standing at a gain are to be transferred into the FIC, this may trigger a capital gains tax liability. Transfer of stampable assets may also trigger stamp duty or stamp duty land tax.

Tax within the FIC

Most income or gains received by the FIC will be taxed at corporation tax rates, currently at 25% for the main rate (for companies with profits over £250,000). Dividends received from other UK companies and most offshore companies will not be subject to corporation tax, and so may be received by the FIC tax free. A FIC also benefits from indexation allowance, which is not available to trusts and individuals.

This means a FIC can offer a highly tax efficient method of rolling up income. The deferral of personal tax until a distribution is made can maximise the assets within the FIC available for reinvestment.

Tax at shareholder level

The only tax liability at shareholder level is on shareholder distributions made by way of dividend. There will be no additional personal liability for so long as any income or gains are rolled up within the FIC.

When distributions are made, the overall tax rates on dividends from the FIC are the same as if the dividends were received on the underlying shares held personally. The overall tax rates on other income are broadly similar to the usual personal rates. In both cases, the benefit is that tax may be deferred by delaying the declaration of any dividends from the FIC. The tax advantages of the FIC are certainly compounded by gross funds being available for re-investment within it, where the FIC is used for long-term roll-up. Were distributions to be taken in the short term, then the tax efficiency of the FIC would be eroded given the so-called 'double' taxation of income and gains in the company and then of the net amount of those on distribution to the shareholder.

Who are FICs suitable for?

FICs are not suitable for everyone, and careful consideration with regard to a family's income and capital, as well as investment objectives, is required. That said, FICs can be an attractive and flexible alternative to trusts (in terms of achieving an IHT efficient gift while building in a degree of control of the beneficiary shareholders), particularly with entrepreneurial clients who are used to operating with a company structure, and they are particularly tax efficient for clients investing in dividend-generating assets, with no need to withdraw funds in the short to medium term.

Paradoxically, FICs may require a 'trust' shareholder, capable of benefiting minor and/or future born members of the family, who cannot be allocated a share class on the FIC's creation.

Trusts should certainly be considered pre-sale of shares in a private trading company as, while a FIC is available post-sale, a trust can offer more planning options pre-sale and a FIC may require a 'trust' shareholder anyway, as mentioned above,

In any event, trusts can be better wrappers for assets qualifying for business relief from IHT, residential property and in terms of the ability to flex benefits from income and/or capital to different beneficiaries at different times without adverse tax consequences (where they do not have to have any fixed entitlements under the trust at all).

FICs are appropriate for UK domiciliaries who are seeking to make controlled gifts in excess of their available nil-rate band, UK resident non-domiciliaries (RNDs) who are 'deemed' UK domiciled, and RNDs who are averse to the use of trusts (although they can create IHT advantageous excluded property trusts prior to 6 April 2025 per the 6 March Budget 2024 announcements) or those simply seeking a trust alternative.

With the recently announced changes to the taxation of UK resident, deemed domiciliaries who have created so-called 'protected' trusts (in reliance on the rules introduced in 2017) – namely, that, from 6 April 2025, foreign income and gains of non-UK resident trust structures will generally become taxable on them as settlors if UK resident – a mitigation (or deferral) of such taxation could involve the introduction of underlying deferral structures such as a FIC.

The deferral of personal tax until a distribution is made can maximise the assets within the FIC available for reinvestment.

What a Labour government may have in store for FICs can only be the subject of speculation, however HMRC confirmed in 2021 that it did not consider them tax avoidance vehicles; the rate of corporation tax they suffer has been raised since (from 19% to 25%); and there are real tax consequences on their creation (depending on how the FIC is funded), ongoing existence and on termination, just as with any other company (even if that does not have the same generational transfer of wealth purpose).

Issues to consider

If a FIC suits the wealth planning strategy of your family, consider the following issues:

- Limited or unlimited company?
- Funding with cash, assets and/or a loan?
- Who will be the shareholders? Will they be 'bloodline' family members only?
- What rights will each shareholder/group of shareholders have?
- Who should have voting rights?
- Who should be the directors?
- Any restrictions on the powers of the FIC?
- Any provisions for specific purposes?
- Is a shareholders' agreement required?

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Julia Cox is a personal tax and trust lawyer with a wealth of experience in private client matters, particularly in estate and succession planning.

Teamwork makes the dream work: family offices achieve the best outcomes when collaborating with outside experts

David Lesperance

When it comes to collaboration between family offices (FOs) and international immigration and tax advisers, two things can be true at the same time. First, FOs cannot generally justify having such specialist advisers on permanent staff. Second, most FOs are hesitant to retain such outside experts because they do not appreciate the complexity of the subject and potential significant benefit from proper advice.

This is the world that I have been dealing with for over 30 years. In this article I would like to share what our firm has learned that makes such collaborations a win for both the client family and the FO. We also prefer collaboration because the end results are always better. In other words, collaboration is a Win Win Win!

With respect to the first truth, let me describe what an experienced outside expert can bring to the FO table. Over 30 years ago, I was asked to collaborate on my first US expatriation. Since then my firm has assisted clients from several dozen countries and set up tax-efficient residence and/or citizenship strategies in over 40 countries. In addition to constantly upgrading and updating our knowledge, we have also built a healthy and vibrant network of tax and immigration experts in all of these countries. No FO can replicate that level of knowledge and experience through a Google search.

Now let me address the second truth – the hesitancy of FOs to bring in an outside expert in this area. First, they do not appreciate the immediate and multi-generational benefits of securing a second residence and/or citizenship. Nor do they appreciate the downside of certain citizenships as it relates to taxation or military service. Second, they may be fearful that the outside adviser will interfere with their own relationship with their client. Third, they are anxious that the outside adviser might take the client out of their current jurisdiction and control. Fourth, they do not want to appear less knowledgeable on such important areas. And finally, they think that they can roll up their sleeves and do it themselves. Let me deal with each concern separately.

First, a well-qualified and experienced international tax and immigration expert is just that. They are not a family office specialist nor do they intend to be.[1] They approach their work from the perspective of adding value not only to the family, but also to the FO. They relish working as part of a team of professionals with different areas of expertise brought together to help craft holistic and integrated solutions for the ultimate beneficiary – the family.

Second, we might suggest some residence or citizenship programme as part of a strategy to protect against threats to the family's wealth and well-being. However, in my experience it is rare that the original jurisdiction did not remain central to the family's long-term activities. Indeed, a well-conceived, long-term strategy for a multi-generational family normally ensures the importance of the FO in the ongoing planning, execution and maintenance of the backup plan. Moreover, in the case of a multi-family office (MFO), the acquired international perspectives and skills often benefits the MFO's other family clients and generates additional work.

Thirdly, there are two types of FOs. Those who feel intimidated by outside experts and those who understand that they can be strengthened by them. We can't really help the first group and rarely work with them because they either ignore these issues or try (and fail) to implement effective strategies by themselves.

As for the second type of FO, they understand how and when to leverage outside advisers. They realise that not only will their family clients benefit, but so will their firm as they can add new arrows to their service offering quiver. Our goal is not to diminish the relationship between the FO and the family. Our aim is to improve it by focusing on our shared responsibility to add value to their client family.

Finally, we give the FO access to our deep and tested knowledge, experience and international networks which would otherwise take decades and enormous investment for them to develop. International tax and residence/citizenship strategies are complex and intensely personal as well as technical. This is not the space for DIY as a few examples below will illustrate.

Case Study 1: The family was about to buy a brick when what they really needed was an architect

About three years ago we were approached by an American MFO that had little experience in

immigration and citizenship matters. They came to us only for international tax advice, because they said they were already speaking about a second passport with an 'authorised representative' of a European citizenship-by-investment programme.

The principal was worth over $200 million and was getting ready to retire, having recently sold his business. With the help of his FO, he was now managing a substantial portfolio and looking forward to spending more time with his grandchildren and travelling with his wife. Understandably, he was concerned about the preservation of his wealth for himself and future generations. This meant protecting his assets from estate taxes on the one hand and spendthrift children and divorces on the other. He and his wife were also worried about increasing political polarisation and violence (they mentioned mass shooting events a few times). For their grandchildren, they were also hoping to provide them with expanded education and work opportunities.

First, we asked how far advanced the discussions were with the authorised representative since we believe immigration and international tax should not be treated in separate silos. The FO said they were just about to sign an expensive engagement. We suggested they hold off until we had first conducted a comprehensive review of the family's situation. The FO agreed and were happy they did.

First, as we always do, we began by examining the family history to see if there were any possible lineage citizenship opportunities.

Our review revealed that the principal had a possible claim to Austrian citizenship through his grandfather who had been a victim of Nazi persecution and was able to flee in the late 1930s. In order to ascertain his claim and locate the documents necessary to substantiate the lineage, we engaged a professional genealogist who conducted extensive research and located the relevant birth and immigration records. The genealogist even provided a copy of a manifest that listed his grandfather and grandmother as passengers and a photo of the ship on which they sailed to the safety of America.

Now that the principal was able to establish lineage citizenship to an EU country for his family, he no longer needed to purchase a citizenship-by-investment. As this strategy saved the client almost US$1 million in expense and over a year in processing time, the client and family office were both very happy. The brick selling commissioned authorised representative not so much.

With the collaboration of the FO, we then prepared a backup plan for the principal and his wife that considered the US and foreign tax implications that would arise from having their ability to relocate to any of the 27 European countries that they could live in as Austrian citizens. The ultimate selection of where they actually wanted to spend time could be made at their convenience.

With the necessary documents in hand, we then prepared the applications for multiple family members. This included many extended family members. Each application was assigned to a case manager at the Austrian mission responsible for the area in which they lived and handled with impressive efficiency. Indeed, within a few months, all the applicants received their Austrian citizenship certificates and passports.

As a consequence of our work on behalf of this family, the FO asked us to conduct a webinar on residence and citizenship for its entire staff during which we focused on two distinct scenarios:

- Americans leaving America; and
- non-Americans coming to America.

Since then, members of this FO routinely contact us early in the cycle when dealing with foreign families considering coming to United States, or their American family clients looking for a backup plan.

Case Study #2: A multi-generational family leaving the United States

Early in my practice some 30 years ago, we were contacted by a US tax counsel for whom we had done a few expatriations and Canadian visa assignments for his high-level US executive clients. He had been engaged by the FO of a very wealthy American client who wanted to renounce his US citizenship. The tax counsel would handle the extensive tax matters, while I would assemble and manage what turned out to be a team of immigration experts in multiple jurisdictions. The tax counsel made clear that the family office wanted their principal's tax and immigration plans to mesh like the gears in a Swiss watch.

To achieve this synchronicity would require a multi-step process that started with a deep dive into the wide range of considerations and requirements

The tax counsel made clear that the family office wanted their principal's tax and immigration plans to mesh like the gears in a Swiss watch.

The key to success for the plans for all three generations was that they were developed through close collaboration between specialist advisers and the FO.

not only of the principal, but also of the other family members who would be impacted. It was clear that whatever the ultimate plan, it had to be accepted at both the boardroom and kitchen tables. As a result, the recommended plan included second citizenships, an alternative country of residence, tax planning pre- and post-renunciation of his US citizenship, the actual renunciation, and post-renunciation advice on future travel to the United States.

First, Canada was ultimately selected as the base jurisdiction for their plan. We then started the process to establish Canadian permanent residence for the principal which would lead to Canadian citizenship after several years. Second, as a short-term strategy, we arranged a much quicker citizenship-by-investment. This would allow the principal to renounce at the appropriate time as recommended by his tax counsel.

Third was the renunciation of client's US citizenship and his departure from the tax jurisdiction of the United States. This required deep analysis of the client's tax situation and modelling a range of possible expatriation options with his FO. Once this was done, the team put the pieces in place that allowed the principal to renounce at the appropriate time. Finally, as the plan called for his relocation to Canada, a post-expatriation tax structure was designed to minimise the impact of Canadian income and capital gains tax. In addition to being culturally familiar and offering convenient access to the United States, Canada does not have an estate tax. All told, this integrated plan ensured that the principal would not jump out of the US tax pot into a Canadian tax fire!

Since then, we have kept in regular contact with this FO to ensure that all family members were properly 'living the plan' and not triggering any unexpected tax events. At our annual review session in 2023, the principal announced that he wanted to pass the reins of control over the family wealth to the next generation who in turn have children of their own. As a result, we looked at residence and citizenship opportunities for the next two generations. Along with the FO and their other trusted advisers, we met around their much bigger kitchen table to work on their plans that were a lot more expansive in terms of the number of people and considerations.

Due to the multi-generational diversity of needs, we reviewed all residence and citizenship options that fell into three buckets of options:

- Go Bag: the ability to be temporarily relocated in safe country in face of immediate natural and man-made disasters;
- Americans living abroad: longer-term relocation which involves becoming tax resident in another jurisdiction while retaining US citizenship (including tax and filing obligations); and
- Expatriation: permanently and legally leaving the US jurisdiction and tax system.

The final strategy was prepared with input at all stages from the FO, US foreign tax advisers and our firm. We proposed a multi-jurisdictional plan to the family that included different solutions:

- Go Bag (applicable for Generation 2 and Generation 3). This included securing work permits in Canada and residence by investment in New Zealand;
- Americans living abroad (for Generation 3). This included securing residence status in the United Kingdom, Portugal and United Arab Emirates; and
- Expatriation (for Generation 2). We organised an EU country citizenship by investment (that would permit residence in all 27 EU countries). Since Generation 2 chose Ireland as their new tax home, we integrated tax planning with US and Irish tax counsel.

The key to success for the plans for all three generations was that they were developed through close collaboration between specialist advisers and the FO which remained responsible for all its normal duties and responsibilities across three – and soon to be four – generations.

Case Study #3: A non-dom Gulf national family resident but not domiciled in the United Kingdom. Now that Labour is in power, its decision time

It might come as a surprise to some that the Gulf Cooperation Council (GCC) countries are the source of many families who are 'UK resident but not domiciled' (aka non-dom). Indeed, if asked where they truly live the answer would be 'London'. Why is this so?

First, they love the lifestyle and educational opportunities available in the United Kingdom.

Second, for over a century non-doms have benefited from the remittance tax regime where they only pay UK income and capital gains taxes on UK income and foreign income that are actually remitted to the United Kingdom.

This meant that they had the best both worlds – low or no tax on their income and gains generated in their home GCC countries, and all the benefits of being a resident of London.

Unfortunately, the remittance tax regime is now nearing its end. The first definitive sign of its pending demise was the 2024 spring budget where the then-Conservative government announced significant changes. These proposals became moot when the Labour Party won a super majority on 4 July 2024. As part of their winning election campaign, Labour promised to abolish not only the non-dom status but even more significantly the existing trust protections on non-UK assets from UK inheritance tax.

While the final implementation details are not yet known, it is anticipated that the new tax regime will mean:

- access to the new regime will be linked to residence rather than domicile making it simpler to apply by the government and restrictive for the taxpayer;
- time limits for certain preferential tax statuses; and
- exposure to inheritance tax on worldwide assets

But wait – isn't this supposed to be a case study about what has been done for a client in the past? Glad you asked, because it is. While many pundits are now counselling their readers to wait on getting advice until after the proposals become actual legislation, some FOs recognised that this would leave little time for designing and executing a strategy to avoid the pending tax storm.

The quickest way to check for storms is to look into the wind

Sailors have been following this simple trick for centuries which these days is being followed by astute FOs and their advisers. In the case of the remittance tax regime, the wind has been blowing for a while, even if the storm clouds only appeared on the horizon in the spring budget. Indeed, the FO for one of our clients has been reading the wind and planning for this predictable tax storm for several years!

The client is a GCC family that has been enjoying the fruits of UK non-dom status for several decades across multiple generations. When its FO first informed them of the likelihood of the demise of non-dom taxation and excluded property trusts, the family paid attention and authorised the FO to bring us and other tax counsel together to strategise. Over a period of six months we reviewed potential tax-efficient jurisdictions that would meet the specific needs of the various family members that included mobility, education, healthcare and lifestyle. We then put together a workable plan that included:

- an EU country citizenship-by-investment; and
- US non-immigrant work/study permits.

Importantly, in order to provide maximum flexibility, the plan was well in place before the election of the Labour government, with certain elements left to be executed once the votes were tallied. As a result, the family are now in a position to become non-resident in the United Kingdom and become tax resident in Italy, Switzerland and the United States on a relatively low tax basis.

So by reading the wind and putting pieces in place 'just in case', the family and its family office will be able to calmly change direction while others are scrambling to figure out what to do. Not only has this saved the family money, it has also saved them unnecessary stress and anxiety. And as a by-product, the younger generation has learned a critical life lesson – always look into the wind.

Case Study #4: Coming to America well prepared

As a result of reading some Bloomberg articles about integrated US pre-immigration and tax planning for Israeli technology companies and founders, the head of an Israeli FO contacted us. Their tech company client was expanding its business into the United States. Along with the expanding business

While many pundits are now counselling their readers to wait on getting advice until after the proposals become actual legislation, some FOs recognised that this would leave little time for designing and executing a strategy to avoid the pending tax storm.

opportunity, the founders also wanted to address some of their significant concerns about economic and political volatility in Israel.

The FO mapped out that they wanted to establish a US office, and secure immigrant and non-immigrant status for the founders, key employees and their families. Of course, they also wanted to legally minimise any departure taxes from Israel and future US taxation.

Like many Israeli tech companies, the founders and the head of the FO operated with an enviable level of trust as a result of previously serving together in the Israel military. As a result, they understood two vital elements of backup planning – getting all the wishes, desires and concerns on the table from the onset, and cooperation between the stakeholders. Since there were multiple families involved, the collaboration between our firm, the FO, Israeli and US tax counsel was essential as was the shared objective that any strategy should not interrupt their business or unduly burden the many families.

The FO clearly understood the needs and risk tolerances of the various families and the business and personal dynamics. As a result, it was agreed that the team would:

- integrate the various advisers and key families;
- remove any possible silos of information or undisclosed agendas;
- show all the stakeholders the full picture as well as their own family picture so that they could see how they aligned;
- allow for creativity; and
- consider all generations.

As a result of being deeply aware of the Israeli family culture as well as the business culture, the FO was instrumental in collecting vital information for the various levels of planning, identifying possible issues before they developed into problems, and communicating plans as they were being developed in order to gain support and commitment. They understood that such lifestyle-changing plans needed to be sold not only at the boardroom table, but also at the kitchen table. As a result, the company successfully transitioned to the United States with barely a hiccup to its business continuity while the founders, key employees and their families were all satisfied with the transition.

In closing, for a variety of reasons discussed above – as illustrated by the case studies – it is clear that close cooperation between FOs and outside tax and immigration advisers is essential to successfully achieve their principals' goals and avoid tax, political or travel storms.

David Lesperance has been advising HNW families for over three decades on integrated tax and residence/citizenship/domicile strategies that mitigate tax and family law threats while maximising mobility and lifestyle needs.

1 A lot of people rely on the "10,000 Hours Rule" to be able to call oneself an expert made famous by Malcolm Gladwell. I estimate I have personally clocked well over 30,000 hours doing immigration and international tax work and still counting!

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Making the invisible, visible – how family offices are helping one social enterprise bring better eyesight to millions

Rebecca Eastmond and Andrew Bastawrous

The following is a transcript of a conversation between Rebecca Eastmond, CEO and co-founder of Greenwood Place and Andrew Bastawrous, co-founder and CEO of Peek Vision.

Rebecca: You're a qualified eye surgeon, CEO of a social enterprise, Peek Vision, a Professor of Global Eye Health at London School of Hygiene and Tropical Medicine and a dad to three children. What motivates you?

Andrew: I grew up living across cultures – my parents migrated from Egypt to the United Kingdom in the 1970s. As a child, I always felt like a bit of an outsider. I was the only brown boy in my school. Unbeknown to anybody (including myself) I was also severely short-sighted. My grades were bad and my teachers said I was clever enough but seemed lazy.

Aged 12, I was reluctantly taken to the optician by my mum and everything changed. I went outside with the trial glasses on and saw leaves on trees for the first time, gravel on the road – all these details I just didn't know existed. When I got glasses I stopped failing at school and eventually qualified for medical school, where I trained to become an eye surgeon (ophthalmologist).

But regaining my sight gave me my vision in more ways than one. I can vividly remember visiting Egypt with my parents at about the same age and seeing children living in abject poverty. They looked the same as me but their lives were so different. I realised that there was terrible injustice in the world and I wasn't okay with it. I'm still not.

I went outside with the trial glasses on and saw leaves on trees for the first time, gravel on the road – all these details I just didn't know existed.

Over a billion people today have poor vision or are blind but the vast majority of them don't need to be. Cost-effective, tried-and-tested solutions exist that could restore or improve sight for the vast majority, yet they have to live without being able to see clearly. I still find it hard to comprehend how many people are held back from learning, earning or thriving because they can't access a simple pair of glasses or a cataract operation.

After I qualified as an eye surgeon in the United Kingdom I worked in the NHS for a number of years, but I wanted to do more. I was fortunate enough to have the opportunity to study public eye health at the International Centre for Eye Health at London School of Hygiene and Tropical Medicine. I met some incredible mentors there and ended up leading a large study into eye health in Kenya.

My wife and I left our jobs and moved to Kenya with our one-year-old son. As part of the study we established 100 temporary eye clinics. The scale of the problem had never been more real to me. Even after a long day of work, there would still be queues of people at the door, some of whom had travelled many miles to see the eye doctor. Despite the incredible team of Kenyan medical and support professionals we were working with, it was clear that we could never do enough. Something had to change.

Around the same time, smartphones were just coming into widespread use. We'd visit remote villages in Kenya with no road access or running water but a perfect phone signal. So we began testing whether smartphone technology – combined with human compassion – could help alleviate some of the pressures that were preventing people from getting the eye care they needed. This evolved into what is now Peek Vision.

Ultimately, it's knowing that the problem is huge and solvable that both fuels me and inspires me to dream big. The other thing that inspires me is my family, especially my three children. I want them to

know that everyone has the capacity to make a difference. I hope that I am setting an example of that in some small way.

Rebecca: From the start, Peek has worked in partnership with eye health NGOs, governments and medical staff. What have you learned from your partners?

Andrew: I've always been clear that technology won't solve the problem alone, people will. However, technology can amplify the best of human behaviour.

Peek provides a way for eye health providers in low- and middle-income countries to find patients – even those who are normally hard to find – and connect them to care. In the areas where we work, specialist eye health resources are incredibly scarce. For instance, in rural Kenya one eye doctor might serve a population of about 5 million people.

Our smartphone vision screening means non-specialists can go into a school classroom, a workplace or door-to-door in a community and accurately refer people who need follow-up to a specialist. The people running the programme get data showing where patients are being lost to the system, so they can make improvements and respond to changes. And the patients get automatic text message reminders which drives better attendance at appointments and fewer wasted resources.

However, the issue with a lot of data can be not knowing where to look. We try to focus on who is being left behind, so those using Peek can ask "why?" and act to change it.

For example, early on when I was living in Kenya, anyone with cataracts was offered free surgery and transport. Despite this, the programme data showed only half were turning up. Of those not coming, the data collected in the Peek system showed they were concentrated from a particular ethnic group who spoke a specific language. Using this insight, our team focused on deciphering what the barrier was for this group. Eventually it surfaced that the Swahili word being used for 'surgery' was actually being heard by the prospective patients as 'butchery'. Changing this to a word closer to 'fix' resulted in the uptake of surgery increasing from 50% to 75% – all from changing one word.

This and multiple lessons like it have shown us the importance of proximity and context to solve problems. Our role is to equip the innovators with a platform that supports their curiosity and compassion to deliver care.

Rebecca: What keeps you up at night?

Andrew: Knowing we can always be doing more and for many it will be too late. For you and me, as soon as we start to experience a change in our vision, we have several options: we could see our local optician, family doctor or eye clinic. For many people, none of those options exist.

I think about a lady called Mama Paul, who had been blind for almost 20 years when she was brought to my clinic. With assistance from her son we managed to examine her. As I peered through the slit lamp, I saw her pupils were white from cataracts.

I felt a familiar mix of sadness and excitement. Sadness because Mama Paul had suffered unnecessarily, but excitement because I knew that something could now be done. Two weeks later, she was taken for treatment to the nearest hospital.

The moment we dropped her home after surgery is one I will never forget. She stood and stared at her small mud and straw house, unchanged in the 20 years she had been blind. Next to it, a man was staring back at her. After what seemed an age, she looked straight at him and asked, "Paul?" Tears filled her eyes. "Paul – you look so old!" Mama Paul embraced her son, and soon the whole village came out. She happily told everyone how old they had become and the tears were replaced with laughter and dancing.

What keeps me up is knowing there are millions of people like Mama Paul who don't get this happy ending because they remain invisible. That has got to change.

Rebecca: What's your revenue model?

Andrew: Peek is focused on identifying the 1.1 billion people living with vision loss that could be treated with existing solutions today. We create technology that allows non-eye health workers to identify those who are effectively invisible, determine which ones have treatable vision problems, and connect them to the right services. This exponentially increases access to eye care.

I've always been clear that technology won't solve the problem alone, people will. However, technology can amplify the best of human behaviour.

I think ultimate success is helping to solve the problem faster than it's growing. Despite all of the work that's being done by eye health workers and charities worldwide, the number of people with poor eyesight or blindness is set to almost double by 2050, to 1.8 billion.

This year we'll reach around 5 million people across over 70 programmes in 12 countries. Our revenue model comes from selling our software and services to governments, NGOs and large eye hospitals. We generate around £1.5 million in sales from them and raise the rest – around £3 million a year – from grants and philanthropy, much of which comes from family foundations.

Rebecca: How do you work with family offices and private philanthropy?

Andrew: A number of individuals and family offices who are interested in our work have followed the journey over many years. I think they're attracted to Peek because of our level of ambition, as well as the evidence behind our approach. Many of our supporters have come through word of mouth and most have given year after year. We have connected to other family foundations through organisations like Greenwood Place. They help to identify organisations with proven solutions, like Peek's, who require financial support to deliver at scale.

When Greenwood Place first started supporting Peek in 2018, we were a much riskier proposition as we were still at the stage of proving that our model worked and was ready to scale up. The connections we made through Greenwood Place and our other supporters were absolutely critical to us getting through those difficult early years and having the space to prove – and improve – our ideas.

Beyond the financial support family offices provide, we find working with them incredibly valuable in terms of the different views they can offer us on our work. Often the questions a new supporter asks us in the process of beginning a relationship with them can prompt whole new ways of thinking about different aspects of our work.

Rebecca: How do you think about impact? Is it just the sheer number of people who get eye tests or is it more than that?

Andrew: I think ultimate success is helping to solve the problem faster than it's growing. Despite all of the work that's being done by eye health workers and charities worldwide, the number of people with poor eyesight or blindness is set to almost double by 2050, to 1.8 billion. The only way to get around that is to treat those people who are currently dying blind unnecessarily; to get glasses to those who are being held back by poor eyesight. We need to equip services to be more efficient, more effective, but also more equitable – really thinking about which groups aren't reached and how we pay attention to them.

So I like to think of impact less in terms of sheer numbers, but more in terms of when will we reach the tipping point? Because at the moment, despite all our global efforts, the problem is growing faster than we're solving it.

Rebecca: How do you approach collaboration and partnerships?

Andrew: I think of it on multiple levels. It's the relationship with the eye health screener using our app – are we making their life easier? Then the person who takes that patient to care – we're sending them text messages in their local language explaining where to go. The care providers get information on who's coming so they can plan. The funding organisations want visibility on whether their resources are making a difference. And then governments need to ultimately take this on for it to go to scale. That's where it gets exciting – when you get buy-in from political leaders, provide tools for day-to-day delivery and create a common view of problems with the willingness to solve them.

Rebecca: What are the biggest opportunities and challenges in eye health right now?

Andrew: In the last six years, the issue of vision and eye health has had a higher profile than ever before. The World Health Organization's first World Report on Vision was published in 2019 and in 2021 there was the first ever United Nations resolution on eye health, which enshrines vision as part of the United

There are huge opportunities in funding infrastructure – building eye hospitals and training staff and these elements are critical.

Nations' Sustainable Development Goals. It's gone from being just a health issue to a development issue which is huge progress.

However, this momentum comes against a difficult global economic backdrop. So the challenge is how we solve these seemingly intractable problems and where to focus. Many of the issues are deeply complicated, but vision is such an enabler to everything else and it is solvable. If we can't solve this, we haven't got much hope elsewhere. In my view there is simply no excuse not to do it.

Rebecca: What can philanthropy do to support this work?

Andrew: There are huge opportunities in funding infrastructure – building eye hospitals and training staff and these elements are critical. But there's also often a lack of data on the actual extent of the problem and that also needs investment. We've been deeply involved in digitising a well-established tool called the Rapid Assessment of Avoidable Blindness that allows mapping eye care needs at a district level. This is often the precursor to mobilising and directing funding. Many countries lack this data, and in its absence there's an absence of action.

Philanthropy can accelerate impact, support infrastructure and training, and provide data to unlock bigger funding. It's about finding places where it can open doors and leverage those gaps more widely.

We have ambitious plans to reach many millions of people and an unfunded plan to do it. Additional resources for Peek would accelerate the number of people like Mama Paul we could reach in the near term, and more importantly how quickly we could help our allies and partners reach the tipping point.

Rebecca: What are your hopes for the future of Peek?

Andrew: It's been an amazing journey so far. I feel so fortunate to work on something that moves me every day and where nothing is static. I've also surrounded myself with very talented people who share the same values. My hope is that we stay curious, remain grounded in why we exist and who we are serving, and make as big a dent as possible on this huge yet solvable problem.

It took us 10 years to reach our first million people in eye health programmes using Peek, just six months to reach the second million. We now reach over 100,000 people every week, so we're working at scale now but this is still just a fraction of what needs to be done. Together with our incredible partners – the charities, hospitals and governments that are at the frontline of eye health as well as the funders and supporters who are helping to make this possible – we have to reach a pace where we can outstrip the growing vision crisis.

I would like Peek to have made a major contribution to reversing the growing vision loss trend. Whether directly because of Peek or through our influence, I believe it's possible. That's the endgame. And then we can start thinking about the other issues we might tackle!

Rebecca Eastmond is CEO and co-founder of Greenwood Place, which provides strategic advice and execution for a small community of entrepreneurial philanthropists. Prior to founding Greenwood Place, she led JP Morgan's philanthropy advisory offering in EMEA for almost a decade. She began her career as a charity lawyer at Allen & Overy, before becoming the founder CEO of The Prince's Foundation for Arts & Kids. She has been on Peek Vision's Board of Trustees since 2019.

Andrew Bastawrous is an Ophthalmologist (eye surgeon), Professor in Global Eye Health at the London School of Hygiene & Tropical Medicine, co-founder and CEO of Peek Vision and co-founder of the Vision Catalyst Fund. He has worked and undertaken research in over 20 countries, has published over 90 peer-reviewed articles, is a TED Fellow, Rolex Laureate and World Economic Forum Young Global Leader. In 2023 Andrew was awarded an OBE in the King's Birthday Honours.

Who we remember – the impact of documenting family narratives on wealth and well-being

Jamie Yuenger

Introduction

In the spring of 2024, I began asking a number of my colleagues working in family wealth one question: "Whose life story from your own family would you most want to have documented on film?" I later recorded these conversations and developed a podcast entitled "Who We Remember". I told people they could choose a living or a deceased family member. Tom McCullough of Northwood Family Office in Toronto selected his father Fred, one of 11 siblings who grew up on a farm in rural Canada. Fred passed away from COVID in 2021. Bryn Monahan of Relative Solutions chose her maternal aunt Elaine, a woman born deaf who surprised her Jewish family by marrying a Muslim man and moving to Afghanistan. Liam McCormick of UBS, British by birth but now based in Atlanta, selected his grandfather James, who watched the *Titanic* set off from Belfast.

The results of my experiment were illuminating and deeply moving. Each colleague, regardless of their background and domain of expertise, was palpably emotional when describing the influence their chosen family member had on their lives. As professionals, we spend much of our time advising clients on topics that significantly impact their family life and personal journeys. By asking this intimate question, it became evident that family history and stories, along with the values embedded within them, are undeniably important to us. Who was my dad, *really*? How did my grandparents end up moving to a foreign country? How did these experiences shape them and thus shape me, my children, and my grandchildren?

This article aims to highlight a crucial yet often overlooked family wealth resource: the preservation and sharing of a family's narrative. While some advisers commonly discuss basic family history and backstory with their clients, the *deliberate and focused effort* of documenting family narratives is currently not a central aspect of family wealth advising. I argue here that identifying, documenting and actively discussing family narratives should become a cornerstone of our comprehensive work with families of wealth.

This article begins with my definition of 'family narrative' and what I term a 'family resilience narrative', followed by empirical and academic data regarding the impact of family narratives on the long-term success and well-being of families and individuals. This discussion is supplemented by two case vignettes illustrating how families I've worked with have intentionally used their narratives and positively influenced other wealth domains, including: financials and investments, governance and decision-making, health and well-being, family dynamics, and leadership development and transition. In conclusion, the article provides actionable strategies for advisers who serve ultra-high-net-worth (UHNW) individuals and families to utilise the family narrative as a tool for achieving more positive client outcomes across the many layers of their lives.

Family narrative, defined

The words 'story', 'storytelling' and 'narrative' have gained power and popularity in recent years. Storytelling has been applied to marketing and personal branding. In this article, I will be speaking about the family narrative, which I define as a collection of stories that encapsulates the history, values and experiences of a family, often across generations. It includes both the triumphs and trials their family members have faced. This collection of stories – their narrative – provides a sense of identity and continuity. A subset of the family narrative is something I coined 'family resilience narrative', which is a collection of stories about how a family overcame adversity and adapted to change over time. A family resilience narrative highlights the emotions felt, the strengths built, and the mechanisms that have enabled family members to navigate challenges and thrive. A family resilience narrative showcases the family's ability to withstand and recover from difficulties and serves as a powerful tool to reinforce family bonds and promote psychological well-being, particularly during times of stress or transition.

Impact of sharing family narratives

The value of sharing family stories is something I witness daily in my work producing legacy films and podcasts for UHNW families. However, the impact and significance of family narratives extend beyond my anecdotal evidence. Robust social science research elucidates why and how family narratives profoundly

affect people. Notably, the work of Dr Robyn Fivush and her colleagues at Emory University in Atlanta has been instrumental in establishing a connection between sharing family narratives and the long-term success and well-being of families and individuals. Furthermore, insights from a recent article I authored on family resilience narratives further underscore the practical applications of these findings.

The research of Dr Robyn Fivush

Dr Robyn Fivush's research emphasises the important influence that family narratives have on psychological wellness and identity formation. Her studies reveal that children and adolescents who have a strong sense of their family history exhibit higher levels of emotional well-being, resilience and self-esteem. This phenomenon is encapsulated in what is known as the 'Do You Know?' scale, which assesses a child's knowledge of his or her family history and has been linked to better coping skills and psychological health.

Fivush and her colleagues propose that family narratives provide individuals with a sense of continuity and belonging, fostering a stronger personal identity. This continuity is critical for resilience, as it helps individuals understand that they are part of a larger, enduring family unit, which can provide support and guidance during challenging times. The narratives often include stories of overcoming adversity, which serve as powerful examples for younger generations, reinforcing the idea that difficulties can be managed and overcome.

The four pillars of a resilience narrative

A family resilience narrative, a term I first used in an article for *Crain Currency*, builds on the foundational work of Dr Robyn Fivush.[1] It incorporates three core pillars identified by Fivush – positive meaning-making, coherence, and emotional truth – and adds a fourth pillar: documentation. These pillars collectively offer a solid framework for understanding how family narratives can contribute to the well-being of families.

- **Positive meaning-making:** Sharing stories in such a way that they highlight how experiences changed us and what we learned from them. By focusing on the positive meanings derived from past events, even and especially hard ones, families can foster a sense of empowerment and resilience in younger members.
- **Coherence:** Creating a clear and structured narrative. A coherent family narrative allows members to understand and make sense of their past, integrating various family experiences into a unified story. A family narrative must make sense to younger members with clear timelines and cause-and-effect connections.
- **Emotional truth:** Being honest about the range of emotions experienced. This involves acknowledging both positive outcomes and the challenges faced, providing a balanced and authentic view of the family's history. Emotional truth builds trust and deeper emotional connections among family members.
- **Documentation:** In order to share stories across time and space, it is critical that they are documented in some form that can be transmitted. This can include films, books and audio recordings.

The names of the families in the case vignettes presented below have been altered for privacy reasons. This measure ensures the confidentiality of our clients while allowing us to share their valuable experiences.

The Bushido family: from total loss to third-generation ownership

One compelling example of harnessing the power of family narrative is found in the Bushido family's initiative during a pivotal business transition. Originating from a lineage deeply rooted in innovation across shipping, oil and transportation sectors, the Bushido family's second-generation leaders laid a sturdy foundation for future generations. As the second generation prepared to step down and a new ownership structure was being put in place, the family embarked on a transformative journey to document their shared history and values through a comprehensive film project.

Central to their narrative is the adversity they faced during World War II, when they, like thousands of Japanese Americans, endured internment in US government detention camps. Forced to relinquish their home and possessions, the Bushido family

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members moved into camps, carrying only what they could manage in a suitcase. Despite these hardships, the Bushido family emerged resilient, rebuilding their lives and reestablishing their business endeavours post-war.

The decision to capture these and other stories on film was catalysed by a board member's proposal to honour departing leadership and impart a compelling vision for the future. This project not only preserved their legacy but now serves as a testament to their resilience and adaptability in the face of challenges. By openly sharing both the hard times and successes, the Bushidos aimed to inspire future generations with lessons of perseverance, unity and the contributions of older family members.

Their family's legacy film project positively influenced several wealth domains, namely: family dynamics, health and well-being, and leadership and transitions.

Family dynamics

Through the filming process, the Bushido family openly discussed their shared history, including the challenges they faced during World War II and their subsequent actions. This open dialogue helped bridge generational gaps, allowing younger family members to collectively appreciate the hardships and triumphs of their ancestors. The collaborative effort in creating the film also encouraged family members to spend important time together, strengthening their bonds.

Moreover, the project has inspired a renewed commitment to family gatherings and celebrations, providing opportunities for continued storytelling and connection. By involving multiple generations in the project, the Bushido family ensured that their values and experiences would be passed down, fostering a sense of unity and shared purpose.

We are trying to move forward together as a family, instead of as branches. The experience of sharing our memories on camera together brought us closer and helped us articulate our common goals and values. – Samantha Bushido

Health and well-being

Angela Bushido highlighted that documenting their family's narrative was interestingly related to her own personal health and well-being. She shared an intimate story of her husband's recovery from alcoholism, illustrating how the family's values and history of overcoming adversity had provided a framework for dealing with personal challenges.

I always remembered my dad saying that sometimes the things you think are the worst turn out to be the best. This idea helped me realise my strength during difficult times, knowing that I can turn bad situations into something positive. The internment camp experience is kind of the root of that resilience story. – Angela Bushido

Leadership and transition planning

The film project also facilitated a smoother leadership transition within the Bushido family. By honouring the contributions of the second generation and documenting their achievements, the family has been able to recognise and celebrate the past while paving the way for the new generation to take leadership roles. This has fostered a sense of continuity and respect for the family's legacy.

Agreeing to do the film and to be interviewed required underlying trust. It crystallised our ability to cohesively tell the same story, showing that we have done something together that makes sense and is consistent with our understanding of our family's journey. – Angela Bushido

The Fowler family: trauma transformed by love

The Fowler family, a vibrant 24-member family spanning four generations, embarked on a legacy film project with us to capture the best of their G1's stories. The Fowlers are a closely-knit, outdoors-loving family. They hold annual family meetings, are actively involved in philanthropy and had previously established strong governance structures. Their family values – love, fun, integrity, stewardship, security, wellness, communication, honesty and education – are central to their identity.

The project was driven by the family's council leader, Matt Fowler. The family unanimously voted to document their oldest living members, a married couple in their 80s, through a film project. Among their collection of personal photos and videos, the family had priceless silent film from the 1930s. Matt collaborated closely with us, introducing the project concept to his parents and other adult family members, gathering key family information, coordinating schedules and reviewing various drafts of the film.

The family created a project to capture stories from both the matriarch and patriarch separately, as well as together as a couple. Their goal was to produce one legacy video celebrating their oldest generation's life stories and also a series of shorter videos highlighting their guiding values.

The family screened the longer film (45 minutes) during their annual summer family meeting. They continue to use the series of five short clips (two to four minutes each) at various gatherings and council meetings to facilitate better communication among family members, spark important discussions and help mitigate disputes.

By documenting the stories of their matriarch and patriarch, they not only preserved their history but also created a lasting resource that reinforces their values and strengthens their sense of shared purpose. Their project positively impacted four family wealth domains: financial stewardship and values, family dynamics and unity, family governance and onboarding, and education and development of younger family members.

Values and financial stewardship

Documenting their values helps them moderate spending and emphasises the importance of stewardship over individual financial gain. This approach aids in aligning financial decisions with long-term family goals and values, ensuring that wealth is preserved for future generations.

These videos help us relate to our values. Our written statements say "these are our values", but I think it's very strong to have documented stories that are directly associated with those values. The values feed back into the financials. For us, it's about assets being family-oriented instead of individual-oriented.

All quotes in this case study section are from the family council leader, Matt Fowler.

Family unity and support

Their series of 'values clips', where the first generation shares personal stories related to a guiding value, have deeply resonated with family members. For example, their video about the value of 'Love' documents a tragic incident in the family and how everyone responded with unwavering support and care. This approach of sharing stories has proven to be more impactful than written statements alone.

There's a big difference when you hand somebody a document that shows mission, vision, and value, compared to backing it up with 30 minutes of videos of our oldest generation talking about why those values are important to the family. People immediately relate and say, "Yeah, I get it. I get why that's important to you".

Family governance and onboarding new family members

The use of family history and values videos has proven effective in onboarding new family members, making it easier for new members to integrate and relate to the family's ethos. The onboarding process involves giving new members access to these videos, allowing them to watch and discuss them with existing family members, which fosters a deeper connection and alignment with the family's core principles.

We have a bundle of documentation around mission, vision, values, what the family office does, how the family works together, financials, and then we give them the links to the family story videos.

Education and development of younger generations

The family narrative has had a significant impact on younger family members, providing them with a stronger connection to the family's past: "I can tell you that personally with my daughter, who is in her teens, she reacted more to the video than me talking to her or her reading a written statement".

Case studies conclusion

The Fowler and Bushido families, despite their distinct histories and challenges, both demonstrate the profound impact of documenting their family narratives. Through their respective projects, both families captured the essence of their values and histories, creating a lasting document that serves as a guiding light for future generations. The Fowler family's initiative reinforced their mission, vision and values. The Bushido family's film project fostered a deeper connection among family members, bridging

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generational and branch gaps and encouraging renewed commitments to family gatherings.

A strong sentiment echoed by the Fowlers and the Bushidos is the importance of family narrative documentation. While they recognise that narrative work is only one piece of a larger puzzle for their family's wealth and well-being, both families emphasised that this work needs to be part of a broader strategy that includes ongoing efforts in communication and governance. This holistic approach ensures that the values and lessons captured in their narratives are effectively integrated into the family's collective consciousness and operations.

Moreover, both families noted that their prior efforts in improving their communication and governance prepared them to fully benefit from their narrative preservation projects. The groundwork laid by earlier initiatives provided a strong foundation, enabling them to navigate the complexities of documenting their histories with greater ease and cohesion. The Fowler and Bushido families' experiences underscore that while family narrative documentation is a powerful tool, its true value is realised when it complements and enhances existing family governance and communication frameworks.

Navigating challenges

Despite the many benefits of documenting family history, the process can also present challenges and complexities. One challenge is the delicate balance between preserving authenticity and respecting privacy. In sharing personal stories, individuals may grapple with questions of what to include and what to omit, particularly when it comes to sensitive or private matters. As narrative professionals working with UHNW families, we must navigate these ethical considerations with care and sensitivity, ensuring that the process of documenting family history is conducted in a respectful and responsible manner.

Another challenge is the practical logistics of capturing and preserving family stories. In an age of overload, where information is constantly being created and consumed, finding the time and resources to document family history can be daunting. Yet, as our client families' experiences demonstrate, the effort is well worthwhile in the long run.

Six actionable steps: initiating family history documentation

As professionals working with prominent wealth, we understand the importance of taking proactive steps to initiate the documentation of family history before key storytellers are past their prime or affected by cognitive decline. By seizing opportune moments and implementing strategic approaches, we can ensure that valuable stories and wisdom are captured and preserved for future generations.

- **Identify trigger moments:** One effective way to kickstart the process of family narrative documentation is to capitalise on trigger moments such as anniversaries, milestone birthdays, or moments of leadership transition within the family. These occasions provide natural opportunities for reflection and storytelling, making them ideal starting points for initiating discussions about preserving family history.
- **Integrate documentation into annual family meetings:** Annual family meetings serve as important forums for discussing financial matters, estate planning and other family-related topics. By integrating family history and story documentation into these gatherings, advisers can encourage families to prioritise the preservation of their legacy alongside their financial planning efforts. Incorporating dedicated sessions or workshops focused on storytelling and recording memories can help families recognise the significance of documenting their history.
- **Facilitate conversations:** As trusted advisers, we play a crucial role in facilitating conversations about family history and encouraging clients to share their stories. By creating a supportive and nurturing environment, we can empower family members to open up about their experiences and memories. Through active listening and

thoughtful probing, we can help uncover valuable insights and perspectives that contribute to the richness of the family narrative.

- **Provide resources and guidance:** Many families may feel overwhelmed or unsure about how to begin the process of documenting their narrative. As advisers, we can offer practical resources and guidance to support them in this endeavour. This may include recommending reputable archival platforms, providing access to professional legacy film, book, audio and presentation professionals, or inviting speakers to present workshops on the power of documenting and sharing family narratives. By equipping families with the tools and knowledge they need, we empower them to embark on this critical journey with more confidence.
- **Emphasise the importance of early action:** It's crucial to convey to clients the importance of taking action sooner rather than later when it comes to documenting family history. Waiting until advanced age or the onset of cognitive decline can limit the ability of storytellers to accurately recall and articulate their memories. By initiating the documentation process early, families can capture a more comprehensive and authentic record of their history, ensuring that nothing is lost to time.
- **Encourage collaboration and engagement:** Family history documentation is often a collaborative effort that requires the participation and engagement of many family members. Encourage clients to involve multiple generations in the process, allowing younger family members to learn from and connect with their elders. By fostering intergenerational dialogue and collaboration, families can strengthen their bonds and create a shared sense of ownership over their collective history.

By incorporating these actionable steps into our advisory practices, we can empower UHNW families to proactively preserve and sculpt their legacy for generations to come. By seizing opportune moments, facilitating meaningful conversations, and providing guidance and support, we can ensure that valuable stories and wisdom are passed down and utilised by future generations. In doing so, we communicate to current and future family members this key message: your own life and your own stories matter.

Conclusion

The importance of identifying, documenting and sharing family stories – especially for families of wealth – cannot be overstated. As advising professionals, we have a unique opportunity and responsibility to help our clients preserve their narratives for future generations. By capturing the experiences and wisdom of family elders, we honour their lives and contributions. As we continue this work, let us remember the outsized impact that documenting family history can have on both wealth and well-being. I encourage us to intentionally integrate family narrative documentation into the central wheelhouse of our field. In the words of family enterprise adviser Bryn Monahan, "Our family history is not just a collection of stories – it's a legacy that shapes who we are and who we aspire to be".

Jamie Yuenger is the founder of the legacy film and podcasting company, StoryKeep, which works with UHNW families worldwide.

1 Charles Raison, interview with Dr Robyn Fivush, "Health is Everything", podcast audio (7 October 2021), www.buzzsprout.com/1033393/9237008.

Liability of a confidant (trustee) in fulfilling the obligation (trust)

Shabnam Shaikh and Daivik Chatterjee

Trusts have been regarded a quintessential part of the common law family. It has been identified that the core of a trust structure, ie it being an obligation, has proven the test of time. Earlier known as 'uses', English knights used the structure in the Middle Ages to transfer their assets to a trusted third party during the Crusades so that there was no interruption in the performance and receival of feudal services. Around this time as well, the English courts refused to enforce such trusts, as it viewed them as simply honorary obligations. It was only in the early 15th century that the court recognised the obligation of a third party to hold and manage the assets of a knight for the benefit of the knight and his family or help in the bequest of such property to the issue of the knight upon his death. The intent of creating trusts has evolved since to allow for the structure to be used as an effective method of protecting one's assets. Such protection may be necessary for one undertaking risky ventures, dealing in highly volatile environments exposing private assets to economic erosion through potential tax, compulsory emergency contribution or for maintenance in matters of matrimonial disputes.

Due to a plethora of reasons for creating a trust, and its subsequent popularity, jurisdictions all over the world were obligated to draft rules and regulations that governed such structures. The Indian Trust Act 1882 (the 1882 Act) was passed with the intent to govern trusts in India and is based upon the English law on trusts. For example, Section 41 of the UK Trustee Act 1925 is very similar to Section 74 of the 1882 Act, discussing the appointment of new trustees. At a more fundamental level, it has been seen that the legislative intent of both acts are alike. The basics of the 1882 Act are discussed below.

The intent of creating trusts has evolved since to allow for the structure to be used as an effective method of protecting one's assets.

As per the 1882 Act, a trust is defined as an obligation attached to the ownership of property, arising from the confidence reposed in and accepted by the owner for the benefit of another or the owner. In essence, a trust is not recognised as a legal entity. A trustee assumes ownership of assets entrusted to him or her by a settlor (and therefore becomes owner of the said trust property), with the obligation to manage or invest and distribute these assets for the benefit of others (beneficiaries). As part of their duties, trustees may need to hold, manage and invest trust property in specified ways, either as directed or according to their judgment. This may involve entering into contractual obligations with third parties. The crux of the issue at hand is that, since, unlike companies, trusts are not considered legal entities, and therefore although technically and practically the contract is on behalf of the trust, trustees are required to enter into the said contracts in their individual capacity.

The critical question then arises: in cases of contractual breach, will the trustee, as the legal owner and decision-maker of the trust assets, be held personally liable, or would it be the trust which is liable for breach of the contract? Secondly, if a trustee is found liable, can he or she be indemnified against the trust assets? This article intends to shed light on the liability of a trustee when a trust enters into a contract with third parties.

The Indian perspective

It is interesting to note that the 1882 Act is silent on the trustee's responsibilities in relation to contractual obligations to third parties. Section 23 of the 1882 Act limits the liability of the trustee for breach of trust against the beneficiary under certain circumstances. It states that the trustee is "liable to make good the loss which the trust-property or the beneficiary has thereby sustained". The Specific Relief Act 1963 (the 1963 Act) has drawn a parallel with the 1882 Act in relation to the definition of a 'trust'. This holds relevance, because as per Section 11 of the 1963 Act, "specific performance of a contract may, in the discretion of the court, be enforced when the act agreed to be done is in the performance wholly or partly of a trust", and any contract that is made in excess of a trustee's powers or is in breach of the trust

cannot be specifically enforced. Interestingly, it is seen that the Indian legislation is largely silent on a trustee's obligations to a third party. Although it succeeds in discussing the trustee's liability towards beneficiaries, and the enforcement of specific performance of a contract by a trust that it has agreed to perform, it fails in stating the repercussions of non-performance.

Despite the Indian legislation being silent on the issue, there are enough examples of judicial precedents set discussing liability of the trust and trustee in such third-party contracts. As per a 1941 ruling, a trustee that is entering into a contract to purchase any kind of property, during the course of execution of the trust obligations, is required to serve as an individual, and is therefore personally liable. Consequently, in situations of breach of contract entered into between a third party and a trustee due to non-payment by the latter, it has been understood that since the trustee enters into a contract in his or her individual/personal capacity, the contention that a decree should not be against the trustee personally, rather against the trust estate or against him or her as manager of the trust estate shall not hold water.

The inability to differentiate between an individual that has entered into a contract as a trustee, and an individual that has entered into the same in his or her personal capacity is evident. The difficulty to discern the two entities is because the opposite contracting party/third party enters into a contract with the individual irrespective of the capacities that he or she holds. Therefore, the third party views and treats him or her as a single entity, making it difficult to separate the two roles.

It is opined that the rationale behind finding a trustee personally liable is understood better when it is compared to the liability of an agent. It is proposed that the element of personal liability of the trustee is attributable to his or her role. A valid trust shall have assets, including but not limited to property, goods or money that are bestowed on the trustee, by giving the trustee ownership over the trust assets. In an agency, the property is vested solely in the principal, on whose behalf the agent acts. An agent in a contract is not personally liable, as contrastingly the contract is with the principal instead. Since the ownership of the trust assets is vested in the trustee him or herself, the trustee stands liable.

Although a judicial body, such as a trust, is enabled to deal with the property for the benefit of another person or persons, it is understood that it is incapable of managing trust properties as a partnership firm in its own individual basis. When a trust does form a partnership with a settlor to manage trust properties, the trustee of the respective trust is in effect joining the partnership with the settlor, therefore implying that the trustee takes on such liability that may arise in a partnership.[1]

A way out for trustees

It has been noticed that there are a total of three options for a trustee to exonerate him or herself of any personal liability. First, a trustee can be entitled to be indemnified from a trust, in respect of the liability incurred by the trustee, provided that the trustee undertook such action of incurring liability in furtherance of the trustees' stipulated duties. In other words, the question posed to determine the liability of a trustee is whether the trustee had the power under the terms of the instrument under which such a person was made a trustee to enter into the contract and subsequently incur liability. Second, building on the earlier rationale, in case of the existence of any explicit or implicit term of contract allowing the creditor or third party to indemnify him or herself from the trust property, then the liability would be transferred to the trust, instead of the trustee being held personally liable. Third, as per jurisprudence other than an explicit provision for the third party to recover their debt from the trust property, Section 52 of the Indian Civil Procedure Code 1908 provides for a single exception allowing a third party to automatically recover debts from the estate. The provision states that "where a decree is passed against a party as the legal representative of a deceased person, and the decree is for the payment of money out of the property of the deceased it may be executed by the attachment and sale of any such property".

The situation in India is undeniably close or similar to the views taken by the courts of foreign jurisdictions in relation to liability of a trustee against a third party, and the method of exoneration of such liability. The article hereon shall provide some relevant instances of foreign courts discussing the same.

Despite the Indian legislation being silent on the issue, there are enough examples of judicial precedents set discussing liability of the trust and trustee in such third-party contracts.

Resembling the view in the United Kingdom and India, Australian courts have held that the trustee shall be held personally liable for debt or liabilities incurred while executing his or her duties and powers for the business of his or her trust.

United Kingdom

In England a distinction exists between cases where a certain specific trust property is set apart or earmarked for the carrying on of a business by a trustee against a debt incurred for the contract of supply of goods for the benefit of the trust. If the former has taken place by the trustee in the course of the business, the creditor shall be allowed to stand in the shoes of the trustee and to recover the money from the trust property. It is to be noted that such a right would only be available if it was explicitly expressed via a condition that a trustee, him or herself, would have a right of indemnity against the trust property. If nothing is due to the trustee, then the trust property cannot be used to indemnify the third party or creditor. It is to be noted that in a scenario where a creditor lends money to the trustee or sells goods to the trustee, such third party has no claim against the trust property. In *Strickland v Symonds*,[2] the English Court of Appeal's rationale made this distinction, since the creditor or third party in the latter scenario of a debt being incurred for the supply of goods for the benefit of the trust is entering into a contract in the personal security of the trustee, it would be unfair to pass a decree holding the trust property liable.

To exonerate a trustee, the English courts have advised that the liability of a trustee depends upon the intention of the parties when entering into a contract. The intention of the parties is understood by viewing the language of the contract as a whole, with a focus on its language, its incidents and its subject matter. When it is apparent that the trustee's personal liability was intended to be excluded and even though the trustee was a contracting party to the obligation, the creditors should look into the trust estate alone.

Australia

Resembling the view in the United Kingdom and India, Australian courts have held that the trustee shall be held personally liable for debt or liabilities incurred while executing his or her duties and powers for the business of his or her trust.[3] Such liability incurred can be tortious, statutory, contractual and equitable (arising out of ordinary principles of law) in nature. A demarcation has been made, identifying that although creditors and third parties cannot directly indemnify themselves against trust assets, but in equity the creditors and third parties may be subrogated to the rights of the trustee against the trust assets. Provided the trustee executes his or her duties, powers and obligations properly, then liabilities and debts incurred can be indemnified against. Subject to the terms of the instrument via which the trust was created, such right of indemnity is capable of having priority over the claims of beneficiaries.

United States

Comparable to the explanation provided earlier, the US courts have ruled that a trustee is a principal and not an agent for the trust.[4] In certain state jurisdictions, such as California, there are no laws explicitly stipulating the various powers of control of trustees, and therefore no direct personal liability can be imposed on them. The courts have slowly but surely evolved their interpretation of the capability of a trustee being held liable. In the *Taylor* case,[5] it was ruled that a contract was a personal undertaking of the trustee, for "unless he is bound, no one is bound, for he has no principal". In *Jessup v Smith*,[6] the plaintiff was retained by the trustee, however, since the latter was unable to pay the counsel fee involved, the plaintiff agreed to render his professional services, provided he could look to the trust estate for payment. The trial court initially held that since the services provided were for the benefit of the trustee him or herself, and not the estate, the trustee would be personally liable. This ruling was reaffirmed by the Appellate Division, however, it was later reversed by the Court of Appeals. The court, in its reasoning, stated that the services rendered were beneficial to the trust. The trustee in such circumstances is capable of and "has the power, if other funds fail, to create a charge, equivalent to his own lien for reimbursement, in favour of another by whom the services were rendered", and the plaintiff could therefore maintain a suit against the trustee in his or her representative capacity.

It is opined that the US courts have gone a step

further to understand the intention of the parties entering into contract by reviewing the language of the same. For example, in cases where the trustee has added 'trustee' or 'as trustee' as part of his or her signature of the contract with a third party, such additions have been categorised as merely 'surplusage'. 'Surplusage', in other words, is language within the contract that has no legal bearing or significance, and therefore may be ignored. It may be argued that, to the common reasonable man, such an addition goes beyond surplusage and clearly highlights the representative nature of the trustee signing the contract. It has been observed that the US courts are looking for explicit language to allow for the exoneration of trustees.

Practical issues

It is suggested that the courts around the world are of the view that the trustees ought to be held personally liable with respect to obligation arising out of a contract. As stipulated above, the courts have limited the exoneration of trustees in case of explicit language present within trust instruments. This must be looked at while considering that as per Section 4 of the 1963 Act, a trust requires to be created for a legal purpose. Since a trustee is acting in furtherance of such legal purpose, it is inferred that a trustee cannot be prescribed illegal powers by the trust instrument. Alternatively, such limitation is due to stipulations within the contract signed between the trustee and third party, which is limited by Section 23 of the Indian Contract Act 1872, stating that every agreement of which the object or consideration is unlawful is void. Therefore, upon the existence of either of the two factors mentioned above, the solvency or insolvency of a trustee is irrelevant to a third party considering that the exoneration of trustee liability shall automatically allow the grieved third party to tap into the trust property.

In the United Kingdom and United States, often a trustee is allowed to compensate themselves from the trust assets when facing personal liability, before making payments out of their personal assets. For example, in *Cuningham v Montgomerie*,[7] the English Sessions Court dealing with a similar issue stated that where a trustee can approach the trust assets to compensate him or herself, such a right may be assigned to the third party to directly enforce their right of relief against the trust property, provided the trustee was acting as per the powers provided within the trust instruments. In other words, the trustee would now be liable in his or her representative capacity instead of being personally liable. However, it is also pertinent to note that in some cases such assignment of rights only takes place once the court has ascertained that the trustee is absolutely incapable or impossible for the trustee to personally pay off the debts of the creditor, for example, due to reasons such as insolvency. Accordingly, it would require a third party to first wait for the court to adjudicate upon the insolvency of the trustee, before being able to be compensate for their losses.

Interestingly, the ratio found in various judgments is that the metaphysical personification of trusts is purely fictional in nature, and impractical considering that legal relations can only exist between persons. In addition, since a trustee is the owner and decision maker of the trust assets, such person must be found liable. However, considering that often a trustee simply plays the role of an administrator, and does not necessarily benefit from the existence of or distributions from the trust, is it justifiable to pin the economic burdens on the trustee?

The traditional argument set forth for imposing personal liability on trustees is that it is difficult for a third party to gauge the extent or value of the trust estate. A trustee is capable of entering into contracts considering his or her own personal reputation and assurances provided. The potential effect of an absolute exoneration of trustee's liability is the implicit allowance for a trustee to contract recklessly, negligently or fraudulently without any kind of repercussions. Additionally, the fact that the trustees owe a duty of care to the beneficiaries must be kept in mind. Any reckless, negligent or fraudulent act affecting the trust property shall allow the beneficiaries to sue the trustees personally.

It is believed that the courts want to strike a balance between ensuring that the third parties receive adequate justice in terms of compensation, and to avoid abuse of rights and power by trustees. A hard-and-fast rule or formula that narrows the liability applicable to a trustee or to the trust assets shall cause gaps, as mentioned above. Ideally, a subjective approach should be adopted while adjudicating trustee liability when the trustee's

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actions are *ultra vires* in nature. For example, instead of limiting the exoneration of a trustee only during the presence of explicit language within the trust instruments or due to stipulations within the contract, the court may also attempt to understand the intent of the trustee when dealing with third parties to ascertain whether there was either negligence or fraudulent intent involved.

Conclusion

India's jurisprudence in relation to trust and trustee liability is in line with views taken by multiple other foreign jurisdictions. It is evident that in relation to trustee liability the jurisprudence discussed above has shifted away from the Roman and civil law theories of 'fiction' and 'concession', where an artificial person that is created by the law is placed in the same category as that of natural persons, with the intention of ease and convenience in administering common commercial interest. It is opined that it is the reason for the attribution of human-like features to artificial persons such as 'character' and 'intent'. However, since a trust is so intrinsically a result of the decisions of its trustee, in relation to liability, the law has clearly made an active step to signify the role and the corresponding liabilities of a trustee *apropos* the trust activities. A trustee can be held liable due to his or her role as owner of the trust properties and decision maker to ensure the absolute best utilisation of the trust properties for the benefit of beneficiaries. Thus, a trustee though acting in a fiduciary capacity will be required to make good the losses for the contracts entered into by him or her. It is imperative that such liabilities of the trustee are negotiated while entering into contracts. As seen, however, in the case where there is explicit or implicit mention of a third party being able to indemnify him or herself against the trust properties in the contract being signed, the trustees are not held liable.

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1 *Dr Thomas Varghese v State of Kerala*, Kerala High Court, 9 November 2022.
2 *Strickland v Symonds* [1917] 1 MLJ 259; [1894] 26 ChD 245.
3 *Re Johnson* (1880) 15 ChD 548 at 552; *Vacuum Oil Co Pty Ltd v Wiltshire* (1945) 72 CLR 319 at 324, 335; [1946] ALR 50; and *Octavo Investments* at CLR 367; ALR 580; ACLR 134.
4 *Taylor v Davis*, 110 US 330, 28 L Ed 163; *Everett v Drew*, 129 Mass 150.
5 *Ibid.*
6 *Jessup v Smith* 223 NY 203; 119 NE 403 (1918).
7 *Cuningham v Montgomerie* (1879) 6R 1333.

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Family dynamics and wealth transition to the next generation

Greg E Custer and Thomas J Frank, Jr

We have all seen studies that indicate a relatively poor success rate of transitioning assets from the wealth-creating generation down to younger generations. The first generation makes the money, the second generation spends the money and the third generation goes back to work. Having spent over three-and-a-half decades each working with ultra-high-net-worth families, the authors have some observations to share including best practices and things to avoid.

The importance of communication

The impact of inter-generational communication regarding the wealth transfer plan cannot be understated. We have seen countless times in which the heirs did not know anything about the plan and were caught off guard. There is a wide range of potential issues that may cause unforeseen rifts among family members. These include seemingly simple things like who gets mum's necklace to more complex issues such as who will run the family business or family enterprise.

A best practice would be to provide a framework for letting the inheritors have a general sense of what will happen when the parents pass away. It isn't always necessary to put specific amounts in the communication to the beneficiaries – a high-level overview is often sufficient. This is particularly effective when the primary assets of the estate are marketable securities and perhaps the primary residence.

Even when there is an even split among beneficiaries, issues can arise concerning bequests that may appear to some family members as inequitable. We have encountered situations, over the course of our work, where adult children were at odds with one another over assets which may not have significant monetary value but may have sentimental value. Many US states permit the incorporation by reference of a list of personal property and devisees. These lists can prove to be extremely valuable to the successor trustees and executors. If you are in a jurisdiction without such rules, making sure the tangibles are thoroughly described in the testamentary document could be helpful. Depending on the jurisdiction, it is important that the date of death values of tangible personal property be obtained for reporting purposes, so before letting the heirs take off with the jewels, it's important to have them valued. This is easier said than done, especially if the successor trustee is geographically distant from the decedent's primary residence.

If it is known ahead of time that there will likely be conflict over a division of personal property, it is generally best to direct the successor trustee or executor to sell it at auction. Occasionally, preserving family peace comes at the price of not preserving the family heirlooms. While we are not psychologists, it appears to us that these disputes are rarely, if ever, about monetary value but rather deep-seated feelings of an individual's place in the family order. That is not usually something the professional fiduciary is equipped to deal with head-on. There are highly-qualified family facilitators, some with professional degrees in psychology, that might be introduced in particularly difficult situations.

If there are family businesses, the situation is more complex and succession planning should be more thoughtful. If there are younger generation family members actively running the family business and it is the intention of the matriarch and patriarch to have them continue running the business after they die, let the other family members know about this ahead of time. There are multiple ways of having non-managing family members participate in a business. This may include giving each branch of the family a seat on the board of directors. If that is not desirable or practical, perhaps a family council which is representative of different branches can be formed for the purpose of having the managers of the company report on business activities.

If it is impossible for family members to agree on who is going to run the business, hiring qualified non-family managers may offer the best solution. Sometimes the heirs do not have an interest or aptitude in the business and outside management is critical to maintaining the value of the business. Utilising board seats or family councils may work well in this situation as well.

If a family is already using non-family managers, having those professionals be aware of the planning is also helpful. Knowing they will be allowed to manage without undue interference provides an incentive for managers to stay with the family company after a transfer of ownership to the next generation. This is a key factor in maintaining and increasing the value of the family company.

We work with one family who uses a family council

in lieu of family members either serving on the family company board or being directly involved in managing the company. Management reports to the family council quarterly in a structured meeting and offers family council members the opportunity to ask questions. These meetings are designed to be educational and in fact there are now family members attending as young as their twenties.

However, if a family decides to organise the family business *vis-à-vis* the family, in our experience, appropriate periodic communication to non-managing family members is crucial to maintaining family harmony as well as allowing the managers to focus on actually running the business rather than worrying about family member reactions to particular decisions.

Lacking a plan for communication often results in a diminished value of estate assets (at the least) or expensive intra-family litigation (at the worst). Either of these will mean a loss of value to succeeding generations. We have seen many examples where the hard work of the wealth-creators has been diminished or destroyed by inadequate communication and planning.

The importance of selecting the right successor trustee

The selection of a successor trustee (or executor) is one of the most important decisions a family can make when planning for wealth transfer. We have seen far too often the surviving spouse is named in this capacity upon the death of the first spouse. This is usually done without any thought of the surviving spouse's ability or interest in the responsibilities that come with managing a complex estate.

In some cases, intrafamily litigation results from naming an elderly surviving spouse as the fiduciary in an estate settlement. This is particularly common in blended families where the surviving spouse is not a parent of the decedent's lineal descendants. In some scenarios, the surviving spouse has never handled the family's finances and now, at perhaps an advanced age, he or she is saddled with a responsibility he or she neither understands nor can be reasonably expected to adequately discharge.

In other cases, the interests of the surviving spouse and the ultimate remainder beneficiaries are quite opposite to one another. A surviving spouse who is used to a certain standard of living is unlikely to want to reduce that standard simply because it would make him or her a more prudent fiduciary. In blended families, and even sometimes in nuclear families, adult children are watching the fiduciary like a hawk and will balk at the first sign of seeing distributions they think are unnecessary. This frequently leads to resentment, strained or broken relationships and, again, in the worst cases, litigation.

Even a perfectly well-meaning surviving spouse/fiduciary may inadvertently mismanage the assets due to a lack of knowledge of basic fiduciary management principles. For example, we stepped into one family situation where the widow invested all the trust funds in bonds to generate the highest income return. She was misled by a trusted neighbour who also happened to represent a mutual fund company. Her stepson who was the remainder beneficiary, sued her and she lost control of the trust and hundreds of thousands of dollars in legal fees were spent. This surely was not the result the patriarch intended.

People tend to name the surviving spouse as a fiduciary as a means of giving them control over the assets that are often held in trust for his or her benefit. There are other ways to achieve this goal. Almost all jurisdictions would permit the appointment of a trust protector, the sole role of which is to remove and replace a fiduciary. Often this is a close family friend or even professional adviser to the first generation.

If the trust protector solution is not appealing, the surviving spouse could be given the direct power to remove and replace a fiduciary. It provides a lot of control without the liability of having them serve as a fiduciary themselves. Even more importantly, it allows for the appointment of a fiduciary with special skills such as managing a commercial real estate portfolio or even perhaps an operating business.

There is a fine line between giving family members control while at the same time ensuring proper fiduciary management. As fiduciary professionals know all too well, these are not roles to be assumed lightly and unfortunately the barrier to litigation (at least in the United States) by unhappy beneficiaries is relatively low.

Another technique we see is the naming of one of the children as a fiduciary upon the death of the parent(s). This is fraught with similar risks. The other siblings may be resentful and distrustful, especially if

Lacking a plan for communication often results in a diminished value of estate assets (at the least) or expensive intra-family litigation (at the worst).

Maintaining the proper functioning of family entities is another key function of a family office. This means keeping separate accounts by entity and ensuring that income and expenses for one entity are not commingled with those of another.

the child trustee is a poor communicator when it comes to facts about the administration of the estate or trust. Naming a child as a fiduciary also places a tremendous burden on him or her at a time when he or she may well be juggling a career and his or her own young children. The child may not be interested in or possess the skills required to manage the family's assets.

The alternatives to naming a child are the same as stated above – using a trust protector and/or a power of removal and appointment of a neutral third-party trustee. Some grantors balk at the perceived costs of hiring a professional fiduciary, yet the failure to consider this option may well result in hundreds of thousands of dollars spent in litigation fees.

While these worst-case scenarios do not always play out, it is certainly worth thinking through all of the alternatives before blindly naming a spouse or child as a fiduciary. The risks are high and the rewards are often few.

Family office governance

While we admit a bias towards using family offices as at least part of the solution in complex fiduciary matters, it is a bias grown out of experience more than simply a desire to tout our services. A well-managed and properly structured family office can play a number of helpful roles in multi-generational wealth transfers.

At a minimum, a good family office is the keeper of the records. Proper accounting and record keeping are essential in fiduciary matters. The more complex a family's situation, the more vital it is to have a repository for the family's financial records. While the accountants (whether housed inside or outside the family office) will no doubt possess a lot of the financial information for a family, legal, transactional, insurance and historical documents may, lacking some sort of better organisation, be spread among various law firms, and individual homes and offices. Of course, it is almost always the case that when a document is needed most, it is impossible to find! Recordkeeping is at the core of a strong family office.

Family office professionals are usually quite adept at crossing the t's and dotting the i's. We have seen instances where intra-family loans were not completely executed, for example, leading to confusion and sometimes even a loss of preferential tax treatment due to poor documentation. Insurance policies may lapse due to poor recordkeeping, possibly resulting in great losses for a family. The family office is often responsible for keeping track of insurance matters and coordinating claims with the insurance companies. We have experiences where the first call a client makes in an car accident is to the family office rather than the insurance company!

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Asset management may also be a common function for a family office. This ranges from simply allocating assets among outside managers to directly taking place in investment management decisions. This is especially true when the assets include private businesses and real estate. We have seen some family offices outsource traditional investment management (marketable securities) while actively pursuing private, alternative investments. Other offices do exactly the opposite. Others still do a combination of both. In most of the situations we have seen, the family office is responsible for reporting on the entire universe of the family's investments.

Family offices come in all sorts of sizes and configurations, ranging from a single bookkeeper to a fully chartered trust company. In most cases, a strong family office can help preserve assets, enhance communication to family members and keep everything organised.

Family philanthropy

Family philanthropy is often touted as a way to bring families together in a spirit of communal engagement and shared values. When well-executed this can indeed be the case. However, we have seen multiple instances where the family foundation fell short of achieving these goals. Again, communication and

training of heirs seems to be the key to a successful family philanthropic effort.

We encourage wealth creators to bring their children and grandchildren into the philanthropic process sooner rather than later. Even young children are able to understand and participate in activities designed to help the communities around them and there are some excellent facilitators who specialise in this area.

We have seen particular success when families begin the philanthropic journey with an exploration of shared values. Exercises designed specifically to tease out common values and interests can be employed quite successfully. This works even when individual family members may have wildly divergent ideas of what supporting the community means.

It is the rare family that is able to navigate these multi-generational conversations and activities without the assistance of a trained outside facilitator. Much like the family office and professional fiduciary lend an air of professionalism to the management and administration of the family's assets and business enterprises, so too can professional philanthropic assistance help with educating younger generations.

Where we have seen the lofty goals of wealth creators fail is when they simply assumed that the children would carry on their parents' pattern of giving. This is almost never the case. It is unrealistic to expect that adult children who have never been a part of the family's charitable giving are all of a sudden going to gather around the table in harmony.

For the family that finds itself in the situation where the younger generations do not have a desire to work as a group, there are solutions. In the United States, it is common to split the private foundation into separate donor-advised funds so that each branch (or each family member) has his or her own pool of funds to be used for philanthropic purposes. This is typically more cost effective than splitting into smaller private foundations.

One important side note for US private foundations – the Internal Revenue Code has very strict anti-self-dealing rules which severely limit the ability of family members of the donor(s) to benefit from property in possession of the private foundation. Practitioners in all jurisdictions should be aware of similar restrictions.

We recently worked with a family where one of the patriarch's hobbies was car racing. His spouse and adult children sometimes participated in these activities with him. He left his race cars to the family foundation on his death. Since the spouse and children were on the board of the private foundation (and due to their relationship with the donor), they were barred from using the cars as they had in the past. This was not anticipated by the family members or communicated to them so it came as quite an unhappy surprise.

One additional aspect facing families who have a private foundation is that of administration. Private foundations are required to file federal income tax returns (which are available to the public) and many states have state filing requirements. Whether the foundation is established in a corporate or trust form, there is the need to keep accurate books and records. This is an additional burden on family board members which may be alleviated by hiring outside professionals. In the United States, we find that for the overwhelming majority of clients, a donor advised fund – a segregated pool at a public charity – offers an easier solution from a compliance perspective. There are other advantages to donor-advised funds about which much has been written already.

Conclusion

The transfer of significant family wealth should be treated akin to business succession planning. After all, many families have liquid wealth far exceeding the value of some businesses. Planning and putting thoughtful solutions in place will increase the likelihood of a successful wealth transition. As we have outlined, this preparation goes far beyond simply setting up a trust or will. A communication plan and organisational structures offer compelling advantages to younger generations.

No matter the jurisdiction and notwithstanding the use of the most sophisticated and complex planning tools, it behooves those of us who are professional advisers to be mindful of the interpersonal needs of families. The topics we've raised are all about using our emotional intelligence (EQ) to supplement our technical expertise. Frequently, it can make all the difference in helping a family transfer wealth from one generation to the next.

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Luxury: the new byword of the global art market

Ronald Varney

The old art market: tradition

Back in the 1990s, during what might be recalled as the glory days of the old, traditional art market, Sotheby's and Christie's each year would publish a massive hardbound review of the previous auction season, highlighting sales across the globe in many diverse collecting categories. And while these books included features on collecting trends, noteworthy museum exhibitions and profiles of eminent figures in the art market, they were mainly a Greatest Hits album for the two houses. Page after page of lavish photography and rapturous prose proclaimed the triumphs of the previous year in salerooms around the world, notably in New York, London, Geneva and Hong Kong.

As much as anything, these commemorative yearly reviews declared the supremacy of Sotheby's and Christie's in the world art market, one that stretched back to the 18th century. For since that time the two houses had been locked in constant if genteel combat for the most prized consignments, especially anything with a royal provenance or a famous name attached. And while they were not a monopoly, they were the next best thing: a duopoly. One way or another, the greatest collections in the world coming up for public sale at auction were bound to come their way. It was just a question of which house would win this or that prize.

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By way of example, the death of the Soviet-born ballet superstar Rudolf Nureyev in 1993 ignited a frenzy of competition between Sotheby's and Christie's. After defecting to the West in 1961, Nureyev had become rich performing all over the world, enabling him to indulge his passion for collecting fine and decorative art on a grand scale, filling his mammoth apartment at the Dakota in New York City.

It was a collection encompassing many diverse collecting categories, some of them traditional, like Old Master paintings, jewellery, photographs and Russian works of art, and others quirkier, like ballet memorabilia and kilims. But Sotheby's and Christie's were well prepared, with a deep bench of specialists to handle every aspect of this glittering, complex collection. One had only to look at the back of a Sotheby's or Christie's catalogue in those days to see listed a dazzling array of dozens of specialist departments, as if the entirety of the art market was included on their rosters of expertise. Even obscure and low revenue collecting fields such as paperweights and portrait miniatures had a place in the grand and glittering universe of the auction world.

But then that world turned upside down.

The new art market: luxury goods

The calamity of Covid certainly played an important role in transforming the art market. Online auction sales now became the norm, with bidders often paying vast sums for artwork bought sight unseen, without one ever having to set foot inside an auction saleroom. However, the greatest change of all was the steady decline of traditional collecting fields – like period furniture, porcelain, silver, 19th-century American and European paintings – in favour of what might be described as Luxury Goods.

It was as if the entire art market had been redefined and downsized, acknowledging not only the changing tastes of a younger generation of art market participants but their demand for objects catering to their luxurious, high-spending lifestyle. Rugs, brown wood, rare books and Chinese export porcelain – the sorts of furnishings one would have found for many generations in the homes of the art market's old guard – were now in decline and fading fast in value and popularity.

By way of example, a fabulous mahogany high chest made by the Townsend-Goddard workshops in

Newport in the 18th century, glistening with centuries of lush patina, previously deemed a masterpiece destined for a museum or a leading private collection, was now deemed an outmoded relic of plunging value.

The new avatars of the art market were Hermès handbags, Scotch whisky, Rolex watches and vintage Ferraris. Luxury had now become the byword for collecting. To this end, Sotheby's and Christie's have created events like 'Luxury Week' as a twice-yearly celebration of affluence and acquisition, with sales devoted to the trendiest new collectibles, the more exotic and expensive the better.

But what about those old traditional fields of collecting like period furniture, porcelain and silver, things families have acquired and treasured over many generations? Is there still a market for such things? The answer, of course, is yes. And yet that market is slowly being overshadowed and marginalised as the trend in collecting turns more towards newer and shinier objects. Families will thus be increasingly challenged, and perhaps frustrated and confused, by a market that reveres and promotes luxury collectibles over prized family heirlooms. Executors and trustees handling estates may suddenly be confronted with sticker shock on learning the current values given to these heirlooms.

And yet the art market is not just about dispersing collections. It is also about forming them. And in every affluent family there will be a younger generation with the means and the desire to pursue their own collecting passions – and they will most likely be drawn to items symbolised by that new byword – luxury. Hence it might be helpful to understand this new luxury art market through some examples.

A guide to the new luxury art market

Above all, this is a market heavy on glamour, flash and enticement, offering many opportunities and pitfalls. Caution and due diligence will thus be the watchwords for successful collecting in this new collecting realm.

Jewellery: something for every taste

It would be hard to name a segment of the art market of more enduring popularity than jewellery. One has only to visit one of the major antique shows, like Masterpiece in London or the Winter Show in New York, to see the dazzling items on offer. In sleek vitrines one will encounter diamond rings and bracelets, tiaras, brooches and earrings, pendants and cuffs, necklaces and chokers, coloured stones of all sorts, cufflinks, and stick pins, and an abundance of styles and periods from which to choose. One of the most appealing styles is Art Nouveau jewellery, encompassing works by some of the greatest jewellery designers, such as Henri Vever, George Fouquet and Rene Lalique.

How to start – Browse the antique fairs and online auction catalogues, and download the frequent buying guides that Christie's, Sotheby's, and other auction houses seem constantly to post. It's a good way to get educated on current jewellery trends and values.

What's your trading card worth?

The field of sports memorabilia has exploded in recent years. Baseball trading cards have long been a staple of this field, with the rarest and most pristine cards selling for millions. Now virtually every professional sport has been rolled into the mix, and all manner of sneakers, game jerseys, skates, bats and any other merchandise that can be attributed to a star player (such as a signed pair of Nike sneakers worn by Michael Jordan in an NBA championship game) are highly prized. One is amazed at the prices being paid for the rarest items. An iconic New York Yankees game jersey worn by Babe Ruth recently made $24 million.

How to start – The major auction houses have greatly increased their volume of sales across a broad swath of sports memorabilia, most of them online. One might begin by identifying one's interests, gaining insight into pricing, and buying from only the most reputable sources where objects can be fully certified as to authenticity, condition and rarity.

The new brown wood

As the value of period furniture steadily declined, a strange phenomenon occurred: brown wood of 20th and 21st-century design became all the rage. This field encompasses works by designers such as Charlotte Perriand and Jean Prouve of France, designers from

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Celebrity memorabilia has long been a staple of the auction market, and the sale of art, furnishings and collectibles owned by a famous film star like Elizabeth Taylor or decorator like Karl Lagerfeld is a major event in the auction calendar.

Sweden and Denmark, and American designers such as Nakashima and Knoll. The field is especially appealing to younger enthusiasts looking for a more sleek and hipper decorating scheme to complement the modern and contemporary art they prefer.

How to start – Auction houses such as Phillips and Wright-Rago specialise in this field of collecting and offer online guides to help one better understand the new brown wood.

How to collect the Macallan Scotch Whisky

While wine collecting remains robust throughout the world, whisky has emerged as the world's most popular spirit. And in that regard, as a recent Sotheby's guide on the subject declared, "The Macallan is quite possibly the most recognized whisky brand in the world". The guide provided enthusiasts with several ways of collecting this famous Scotch whisky, not just by the bottle but with an entire series. A Fine and Rare Collection, for example, would comprise vintage whiskies dating from 1926 to 1989. And perhaps this is the genius of the new 'Luxury-themed' art market. With enough money one can 'package' an entire collection in any field of interest.

How to start – A good deal of due diligence and research would be in order before launching into this arcane field of collecting. One might start by subscribing to *The Wine Spectator* and *The Whisky Spectator.*

Noel Gallagher's electric guitar

Celebrity memorabilia has long been a staple of the auction market, and the sale of art, furnishings and collectibles owned by a famous film star like Elizabeth Taylor or decorator like Karl Lagerfeld is a major event in the auction calendar. A recent and very timely example was the sale of a Les Paul electric guitar "owned and used by Noel Gallagher during sessions prior to the final recording of Oasis' 1994 debut album 'Definitely Maybe' at Sawmills Studio". Sotheby's shrewdly offered this guitar to coincide with the recent announcement of Oasis' reunion after years of nasty squabbling between Noel Gallagher and his brother Liam.

How to start – Sales of celebrity memorabilia are featured often at the major auction houses and given lavish publicity. Estimates are often ludicrously low to entice frenzied bidding.

A Ferrari for every garage

While vintage automobiles has long been a popular global collecting category, in recent years it seems to have exploded with prices worthy of the finest Post-War and Contemporary paintings. This is a field in which 'discovery stories' about cars can drive prices to record levels. A vivid example is the ultra-rare Ferrari 250GT SWB California Spider that for decades had been hidden in a shack at a family home in France, buried under a mound of newspapers and in need of a complete restoration. At auction it brought €16.3 million.

How to start – Hemmings Motor News, "the bible of the collector car market since 1954", can provide a useful guide to all the possibilities in this field, from 1950s' American muscle cars to Italian roadsters and racecars. The auction houses RM Sotheby's, Hagerty, Bonham's and David Gooding have frequent sales, with informative and alluring catalogues to spur one's interest.

A Birkin bag for every closet

The cult-like following of vintage Hermès handbags is an art market phenomenon. A worthy example might be the Birkin 20 in Vert D'eau Matte Alligator bag that sold in Hong Kong in 2023 for $115,570. This field is so overheated that one sees announcements of bags constantly on auction websites, many of the bags being sold retail as they might in a Hermès store – if you could even get on the waiting list.

How to start – As fake handbags are commonly sold on the black market one might well consult the leading auctioneers for guidance in collecting only authentic and vetted bags.

Paul Newman's Rolex

The luxury watch market is another booming enterprise, and the auction houses have stirred passions to boiling point for the rarest and most complicated

watches from makers such as Patek Philippe, Richard Mille, A. Lange & Sohne and Audemars Piquet. Rolex was given a monumental boost in popularity with the auction sale in 2017 of a Rolex Daytona once owned by Paul Newman for $17.8 million, establishing a new world record for any watch.

How the start – Looking through online watch catalogues is a great way to educate the eye and learn about pricing. Speaking with an auction specialist or retail salesperson is another way to gauge the best opportunities for buying wisely.

Department store shopping

One was intrigued to read recently on the Sotheby's website the announcement of a new "Sotheby's Maison" being opened in Hong Kong. The blurb, which seemed to foreshadow a number of new such retail stores across the globe, read:

We envision for this state-of-the-art space to be the epicenter of culture for global visitors – a destination where generations of art and culture enthusiasts come to engage with and be inspired by extraordinary objects and experiences.

In these upscale 'museum-quality' retail salons one will encounter a curated universe of the most extraordinary works of art – dinosaur fossils, jewellery, African art, sneakers, Old Master drawings and design – all to enhance one's luxury lifestyle.

Perhaps this is what Sotheby's and Christie's were destined to achieve from their earliest beginnings in the 18th century: to become upscale department stores. Eventually, the very notion of auctioning items may become *passé*. Luxury, after all, is about instant gratification.

Ronald Varney is the Principal of Ronald Varney Fine Art Advisors in New York. After working in banking and the film industry, he started his career in the art market in 1989 at Sotheby's, where he was Senior Vice President of Business Development. He began his own firm in 2002, advising families and their advisers throughout the United States and Europe on a wide range of art-related issues. He has written extensively on the arts for Esquire, Smithsonian, The Harvard Business Review, The Wall Street Journal *and other publications. In 2019, 2020, 2021, 2022, 2023 and 2024 his firm was named the winner in the category of "Art & Private Collections" at the Family Wealth Report Awards in New York. He is a trustee of the Delaware Art Museum.*

New Bar Committee for family offices is the first of its kind in the United States

Nicola Saccardo

When the 2024–2025 bar year kicks off in the autumn, the Chicago Bar Association (CBA) will have a new committee unlike any other in the United States. Focused on family offices, it will be the first organised committee of lawyers who practise in this niche space.

According to the CBA's committee guide:

The Family Office committee supports attorneys who counsel clients utilizing family office structures to manage significant wealth and complex assets. This includes both retained and in-house counsel, locally and nationally. Through meetings, forums, and seminars, the committee fosters collaboration among practitioners in the inter-disciplinary practice of Family Office law, which includes: estate planning & trusts, tax, business transactions, and corporate governance.

The idea came from one of the committee's inaugural chairs, Nicholas Tyszka, an attorney at Handler Law, LLP in Chicago, who focuses his practice primarily on governance issues for family offices.

"As I learned the family office space, what I quickly saw was that unless a client with an existing family office came to us seeking new counsel, we largely didn't know what other lawyers were doing", said Tyszka. "It's only when we saw governing documents from other firms that I could see the nuanced differences between what we were doing for clients and what other lawyers across the country were implementing."

Thomas J Handler is the chairman of Handler Law, LLP in Chicago. He leads a team of more than 20 lawyers who focus almost exclusively on advanced planning for family offices and admits that the legal landscape for these offices has been opaque.

"It's not uncommon for me to speak at family office conferences around the world alongside lawyers from other leading firms in the space – firms like McDermott, Perkins, or Withers", said Handler. "And while we speak generally about holding or operating companies, and the types of trusts we use and where we domicile them, part of what differentiates each player in the marketplace is what we don't talk about. So there's no question that there hasn't been a lot of transparency."

But as the number of family offices in the United States has grown dramatically during the past 40 years, it has been increasingly difficult for the few law firms who routinely handle these matters to accommodate the demand.

Handler was admittedly an early entrant into the modern-day family office practice, being the first firm in the country to start a dedicated practice group. "During my career, I've represented more than 350 family offices, and more than 100 billionaire families", added Handler. "And I'd say that as I sit here today, we really still have only a handful of law firms who really know what they are doing. The planning can be very complex and good governance can have huge implications on future tax liability and asset protection. So good lawyering matters."

Before the committee was formed, Tyszka examined how many law firms across the country self-describe themselves as having a "family office practice".

"Despite there being so few lawyers who have done this many times over, there seem to be a lot of folks who are clamouring to get into the industry", added Tyszka. "We found almost 60 firms who say they do this work, though my guess is that many of these are firms who have only done tangential work for an office and have little experience with formation or true governance. And there's really no good place for them to learn."

Angelo Robles, the founder and former leader of the Family Office Association and now founder of SFO

As the number of family offices in the United States has grown dramatically during the past 40 years, it has been increasingly difficult for the few law firms who routinely handle these matters to accommodate the demand.

Continuity, has advised thousands of family offices and dozens of billionaire families throughout his career. He sees the wisdom in a committee like this starting in Chicago.

"While a lot of old money emanates from the east coast and tech money comes from the west coast in places like Silicon Valley, Chicago has its share of blue chip families like the Pritzker's and Crown's", said Robles. "And because of the rich history of trust companies like Northern Trust and BMO Harris, alongside MFOs like Gresham, a lot of the behind-the-scenes work goes on in Chicago. And then you have some of the best family office lawyers in the world like Domingo Such and Tom Handler – they're all Chicagoans."

The committee has become a true group effort. Along with Tyszka, the inaugural committee will be led by Anthony R Licata, the former managing partner of Taft Stettinius & Hollister LLP's Chicago office; Ray J Koenig III, the global co-chair of Clark Hill PLC's litigation practice and immediate past president of the Chicago Bar Association; and Jennifer F Kuzminski, a trusts & estates partner at Aronberg Goldgehn Davis & Garmisa.

The group will also have an advisory council made up of prominent American attorneys like Handler. But it will also include prominent international attorneys like Marnin Michaels of Baker McKenize and Nicola Saccardo of Charles Russell Speechlys.

The family office committee will meet for the first time on Tuesday 17 September at 4:30pm, which will feature a panel assessing the current state of the industry. It will take place at Clark Hill and be followed by a kick-off reception immediately thereafter. Future meetings will then take place monthly and will be available virtually for lawyers outside of Chicago.

Nicola Saccardo is a Partner of Charles Russell Speechlys LLP. He is admitted to practise in Italy as a lawyer and as a chartered accountant, and in England and Wales as a solicitor. His area of expertise is Italian tax law, with a focus on taxation of trusts, estates and HNWIs; relocation of HNWIs; estate tax planning; and international and EU tax law. Nicola is the Editor of The International Family Offices Journal.

News section

Selection from STEP News Digests – industry news round ups from worldwide sources and experts. Included with the kind permission of STEP – for more details see www.step.org/industry-news-digests 15 July – 16 September 2024

FATF: More progress needed on regulation of virtual asset AML measures
15 July 2024

Many governments are still lagging on implementation of the anti-money laundering (AML) measures regarding virtual assets and virtual asset service providers specified in the Financial Action Task Force's (FATF's) Recommendation 15, according to FATF's latest report.

COSTA RICA: Legislation seeks to prevent the cash acquisition of registrable assets over US$10,000
7 August 2024

The Costa Rican legislature is discussing an article addition to Law 7786 that would prevent buyers acquiring registrable property over US$10,000 from making payment in cash. Instead, they would be required to pay through an entity supervised by the General Superintendency of Financial Entities. The proposal intends to counter money laundering and improve transparency. Law firm Arias notes that following initial approval the article has been withdrawn for further discussion due to "ambiguous and subjective" wording.

CONTENTIOUS ESTATES: Canadian court recognises trustee's authority to sell estate properties
13 August 2024

The Superior Court of Justice for Ontario has confirmed that a trustee had the legal authority to manage and sell properties belonging to an estate, despite one of the beneficiaries residing there (*Kulyk v Kulyk*, 2024 ONSC 4213).

TAXATION: US Supreme Court reverses IRS tax whistleblower case
13 August 2024

The US Supreme Court's decision to abolish the *Chevron* doctrine is already having an effect on US Internal Revenue Service (IRS) rulings, experts have noted. The court has now reversed an appeals court decision in an IRS case, where a whistleblower is challenging the IRS' denial of his application for a reward. The court's ruling on the 40-year-old *Chevron* doctrine on 28 June 2024 limits the power of federal agencies such as the IRS to interpret the laws they enforce and may lead to more challenges to IRS rulings.

CONTENTIOUS ESTATES: EWHC acknowledges uncertainty over whether attesting witness must be called
15 August 2024

In a dispute between two daughters over the validity of their mother's will, the England and Wales High Court (EWHC) had to re-examine the traditional rule that an available attesting witness must be called to give evidence where a will has been challenged on due execution grounds (*Dunstan v Ball*, 2024 EWHC 2105 Ch).

ITALY: Charge for flat tax regime is doubled following G20 push
15 August 2024

Italy's government has doubled the fee payable by immigrants who register for the lump sum tax regime, as a result of the G20 governments' push to limit tax planning opportunities for high-net-worth individuals. The regime applies only to foreign-sourced income.

CONTENTIOUS TRUSTS: Son remains as trust beneficiary despite disputed paternity
19 August 2024

The England and Wales High Court (EWHC) has rejected a claimant's attempt to have his brother removed as a beneficiary of a family trust settled by their legal father. The court agreed with the claimant that his brother was probably not the deceased's biological son but ruled that the natural meaning of "the children" as used in the trust deed included both men (*Marcus v Marcus*, 2024 EWHC 2086 Ch).

BAHAMAS: Final consultation on minimum top-up tax for MNEs
19 August 2024

The Bahamas government has published the draft Domestic Minimum Top-Up Tax Bill 2024, addressing the impact of the OECD/G20 Pillar Two global minimum corporation tax for large multinational enterprises (MNEs). The consultation on the draft Bill ends on 16 September 2024.

PERU: New rules will tax non-resident digital service providers
21 August 2024

Peru's executive branch has enacted Legislative Decree No.1623, creating new rules on the taxation of non-resident digital service providers and setting a VAT rate of 18%.

BRAZIL: Senate considers VAT reform Bill
21 August 2024

The Federal Senate of Brazil is considering legislation that would reform and simplify VAT calculations. The Bill was approved by the Chamber of Deputies on 19 July 2024. It specifies taxable events for new levies that would replace VAT and revoke potential reimbursement of the programme of social integration (PIS) and contribution for the financing of social security (CONFINS) credits. The new levies would include the contribution on goods and services and the tax on goods and services. The government is intending the reforms to take effect from 1 January 2026. "The Brazilian indirect tax could significantly affect the tax burden on businesses", notes consultancy EY. "Many current strategic and operational models will need to be reviewed, as certain structures may no longer provide benefits and are operationally complex."

TAXATION: Failed IHT-planning scheme succeeds because HMRC wrongly issued clearance certificate
2 September 2024

The First-tier Tax Tribunal (FTT) has barred HMRC from pursuing GB£588,700 of underpaid inheritance tax (IHT) resulting from a failed IHT-planning arrangement, because one HMRC officer erroneously issued a clearance certificate to the executors while another was still investigating the estate (*Carvajal & Carvajal v HMRC*, 2024 TC09248).

BRAZIL: Reforms propose amendments to taxation of inheritance
4 September 2024

Brazil's Chamber of Deputies has approved major revisions to the country's tax code under *Projecto de Lei* 108/24, which proposes reform to the tax on inheritance and donations (*Imposto sobre Transmissão Causa mortis e Doação de Quaisquer Bens ou Direitos*).

CONTENTIOUS ESTATES: Litigation costs must be kept separate from 1975 Act award, says EWHC
5 September 2024

The appeal in *Jassal v Shah* (2024 EWHC 2214 Ch) under the Inheritance (Provision for Family and Dependants) Act 1975 (the 1975 Act) turned on whether litigation costs in such cases should be dealt with separately from the substantive award, or whether it is ever permissible for the court to award a claimant his or her costs as part of the substantive relief.

CAYMAN ISLANDS: Key amendments to Proceeds of Crime Act delayed until 2025
5 September 2024

The commencement of Sections 11, 12 and 13 of the Cayman Islands Proceeds of Crime (Amendment) Act has been delayed until 2 January 2025. The sections, which concern the offences of "concealing", "arrangements" and "acquisition, use and possession" were originally scheduled to come into force on 30 April 2024. Most of the act's other provisions came into force on 31 January, affecting defences for financial intermediaries against money laundering prosecutions.

EUROPEAN UNION: Clarifications on exemptions from ban on legal services to Russians
9 September 2024

A notary working in an EU Member State does not breach the European Union's sanctions against Russia by authenticating the sale of a property owned by an unlisted Russian company, the Court of Justice of the European Union (CJEU) has ruled (Case C-109/23).

LUXEMBOURG: New tax measures to take effect from 2025
9 September 2024

A significant package of tax measures for Luxembourg businesses and residents will take effect from the beginning of the 2025 fiscal year. The measures include: a 50% exemption of gross annual salary up to a maximum of €400,000 for impatriates; an increase in the partially tax-exempt profit-sharing bonus from 25% to 30% of gross annual salary; a one percentage point decrease in corporate income tax; a new exemption for actively traded ETF Mutual Funds (UCITS); reduction of the minimum-net-worth tax cap from €32,100 to €4,815; and a new option to waive the exemption applicable to dividends and capital gains.

ESTATE ADMINISTRATION: MoJ clarifies position on E&W solicitors receiving OPG queries on valid LPA execution
12 September 2024

The Ministry of Justice (MoJ) has noted that solicitors acting as certificate providers in England and Wales not will not be legally required to respond to inquiries made by the Office of the Public Guardian (OPG) about whether a lasting power of attorney (LPA) has been validly executed.

AUSTRALIA: Proposed Bill expands AML regime to include more service providers
12 September 2024

The Australian federal government has tabled the Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2024. The Bill expands the anti-money laundering (AML) regime to lawyers, accountants, trustee service providers, corporate service providers, real estate agents and precious commodity dealers.

ITALY: Dispute over status of Italian trust assets is referred to CJEU
16 September 2024

An Italian court has referred two crucial questions to the Court of Justice of the European Union (CJEU) concerning the legal status of assets held in discretionary trusts where the beneficiary is designated under EU sanctions against Russia (*FZ AR SpA v Italy*, C-428/24).

SWITZERLAND: Pillar Two implementation will apply IIR instead of undertaxed profits rule
16 September 2024

The Swiss Federal Council has decided to bring the international income inclusion rule (IIR) into force with effect from 1 January 2025, complementing the Swiss supplementary tax already introduced in 2024. Both tax rules support implementation of the OECD/G20 minimum 15% business tax rate in Switzerland. They prevent other jurisdictions taxing foreign profits by applying the undertaxed profits rule. The vast majority of EU Member States, as well as Australia, Canada and the United Kingdom, are planning to apply the undertaxed profits rule from 2025 onwards. However, Switzerland has decided not to bring it into force for the time being.

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