



# Diverse dynastic drivers

For global families, managing wealth across one or more jurisdictions engenders numerous complexities. A recent *STEP Journal* roundtable, sponsored by RBC Wealth Management, examined these challenges

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## PARTICIPANTS (L-R)

### FRONT ROW

- + **ROSIE SCHUMM**  
Partner, Forsters
- + **SARAJANE KEMPSTER (CO-CHAIR)**  
Director, Fiduciary Specialist Team,  
RBC Wealth Management
- + **CHRIS McCALLUM TEP (CO-CHAIR)**  
Trust Specialist,  
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### BACK ROW

- + **NICK DUNNELL TEP**  
Partner, Farrer & Co
- + **LISA GRAY**  
Tax Manager, Blick Rothenberg
- + **EMMA WHITE TEP**  
Senior Associate, Private Client,  
Forsters
- + **MARILYN McKEEVER TEP**  
Partner, New Quadrant Partners
- + **IAIN YOUNGER TEP**  
Director, Frank Hirth
- + **LUNED REES WILLIAMS**  
Partner, Camilla Baldwin
- + **BASIL ZIRINIS TEP**  
Partner, Sullivan & Cromwell
- + **NICK WARR**  
Head of International Private  
Wealth, Taylor Wessing

In July 2019, 11 wealth management experts gathered in London for a STEP roundtable discussion, sponsored by RBC Wealth Management, looking at the challenges of trust and estate planning for internationally mobile families.

Co-chair of the roundtable, Sarajane Kempster, a Director in RBC Wealth Management's Fiduciary Specialist Team, opened the conversation by discussing the diverse issues faced by global families and asking where practitioners should start in creating a structured plan for their wealth. 'When dealing with a family based internationally, questions of their residency, their assets and the jurisdictions in which they're housed, any businesses the family may own that, again, may be operating across different jurisdictions, and much more, needs to be considered,' Kempster pointed out. 'If a family comes to seek your advice and to create a trust and estate plan, where should you start?'

Emma White TEP, a Senior Associate in Forsters' Private Client group, responded that one of the first steps in planning for any family should be a conversation about their priorities: 'In the past, people's number-one priority has often been tax efficiency, yet, although tax remains an important driver for many clients, there are now also many other priorities that come into focus when we're having that discussion. One is privacy and information-sharing; another is the concern around public perception: clients want to consider what their planning might look like from an external perspective.'

'A lot of planning depends on the family dynamic and objectives, and how everything fits together,' agreed Marilyn McKeever TEP, Partner at New Quadrant



Partners. 'Objectives might well include things such as divorce protection, anti-forced heirship, privacy and so on. Once we have established those objectives and how they interact, we can look at how to make multi-jurisdictional wealth work in the most tax-efficient way.'

#### CHANGING DYNAMICS

The participants discussed best practice for choosing structures, and jurisdictions in which to house them, as global mobility continues to grow.

'We're seeing more geographical fragmentation than previously,' said Nick Warr, Head of International Private Wealth at Taylor Wessing. 'Fifteen years ago, one jurisdiction would be the holding jurisdiction for the family wealth, whereas now, we find three or four different structures in different jurisdictions, partly due to the diversity of family members between the jurisdictions, but also to hedge against political risk.'

Understanding the motivations of a client is key to finding the right jurisdiction for them. For many UK clients, the US is seen as a jurisdiction for consideration due to compatible levels of taxation, as well as its market stability. Sullivan & Cromwell Partner Basil Zirinis TEP added that this, as well as public perception, is also contributing to the movement of trusts from offshore jurisdictions to the US.

Nonetheless, said Chris McCallum TEP, a Trust Specialist at RBC Wealth Management, and co-chair of the roundtable, vehicles that may be tax efficient in the US are not necessarily the best choice from the perspective of

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- Emma White

internationally mobile clients, with US tax planning very different to planning in the UK for trusts, charities and reporting. He added that all structures should be reviewed before a client moves between jurisdictions.

Kempster pointed out that choices of both vehicle and jurisdiction are also being governed by a wish for simplicity: 'In a world where everyone wants to move around and we're dealing with different tax frameworks and legal systems, sometimes clients just want to simplify their affairs.'

'It very much depends on the client,' added Nick Dunnell TEP, a Partner at Farrer & Co. 'There are some who want the benefits of a trust, but also want greater control over their funds, so the practitioner has to look at the degree to which the client should take authority over their structures, while also having the benefits of trust protections.'

White agreed: 'It's important not to plan for simplicity at the expense of maintaining flexibility. It's all very well to have direct personal ownership of assets, where it's apparently clean and simple, but, in the context of global instability and internationally mobile families, the best thing they can have is flexibility. And quite ➡'





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often there will need to be an element of structuring in place to allow that.’

Across the board, participants agreed that flexible structuring of different pots of funds also allows families to mitigate some of the possible risks of family dispute.

‘You have to think about the risk from the outset,’ said Zirinis. ‘Play the scenarios out, look at how structures could be attacked across jurisdictions, and how you would therefore litigate across multiple jurisdictions.’

He added that it is important to ask the family key questions when they start out with a new trust structure: is the whole family conducive to this management of money? What are the family relationships like and, for example, what are their attitudes to pre-nuptial agreements? Only when practitioners establish the answers to these sorts of questions can they fully protect trusts and other structures against future litigation.

‘Investment advisors have to ask all those questions to hedge that risk adequately,’ concurred Lisa Gray, Tax Manager at Blick Rothenberg. ‘We have to know what money the clients need, where they need to access it, and why they need to spend it, so we can help them plan appropriately for their different pots.’

#### DIVORCE AND GENERATIONAL DIVIDES

‘When we put pre-nups in place for internationally mobile families, we’re trying to guarantee certainty for the family, juxtaposed against the element of uncertainty about where they’re going to be living,’ explained Rosie Schumm, Partner at Forsters. ‘More and more often, we’re including arbitration clauses in our pre-nups to make them simpler to enforce and also maintain some of the privacy they’ve worked so hard to keep.’

Luned Rees Williams, Partner at Camilla Baldwin, also commented on the benefits of an arbitration clause in keeping that privacy, but warned that, although pre-nuptial agreements can include jurisdictional clauses suggesting which country’s law should govern a divorce, in

EU countries this can make ‘little to no difference, and couples sometimes cannot “lock down” a particular jurisdiction in which to conduct a divorce’.

The participants agreed that transparency and flexibility are vital when bringing a spouse into a family arrangement, especially as family dynamics and objectives evolve and it becomes increasingly important to have a structure that is flexible to meet changing needs or a divergence of interest. This, they argued, is where next-generation education around the family wealth is key.

‘I’ve seen cases where it’s been difficult to get the discretionary trust information and inheritance information from the older generation, and a pre-nup has actually opened the next generation’s eyes to what they will receive from the matriarch or patriarch,’ said Schumm.

‘You have to be aware that the next-generation client might be very different in their concerns and wants to their parents,’ Williams agreed, adding that people’s interests can change and lose alignment.

Dunnell commented that, in certain jurisdictions where wealth is still very much generated and managed by the patriarch, there can be a barrier between the advisor and children when it comes to finding out those concerns and interests.

Iain Younger TEP, Director at Frank Hirth, asked how advisors can combat the big cultural difference between generations around how much the matriarch or patriarch is willing to include their children in the family



wealth planning – particularly when, over time, generational objectives may have become blurred as internationally mobile second and third generations become resident in other jurisdictions.

‘When working with the children, it’s very much about educating them on the family wealth while being aware of those dynamics,’ explained Gray. ‘It’s a problem when the children know that they’re going to inherit something, but aren’t sure what. They might be resident in one jurisdiction and have no idea about the tax implications of the jurisdiction where the family wealth is situated, and we have to balance discussing the issues they might want to consider without stepping on the parents’ toes.’

### PHILANTHROPIC ATTITUDES

Educating the next generation on the family wealth, however, is an area where the participants are seeing positive trends.

McCallum discussed how often the ‘wealth creator’ parents want to see their children stand on their own two feet when it comes to both making and managing money.

‘We’ve seen situations where the patriarchs and matriarchs pass a portion of the wealth to the next generation, who then manage that as a stand-alone product with their own advisors, grow that wealth, before taking on responsibility of the true wealth over time,’ he said. ‘They are able to follow their own investment philosophy, and have a sense of ownership and responsibility, while the main bulk of the wealth remains in the overarching family settlement, which is closely aligned to the parents’ philosophy and views.’

For many of those around the table, the investment philosophy of the younger generation is becoming far more philanthropic. Warr commented that many of those coming into family wealth are thinking about what they can ‘give back’ in terms of both charity and legacy.

However, there are pitfalls for both clients and practitioners to be mindful of in the space of philanthropic investments.

Although charitable giving is very tax efficient in jurisdictions such as the US, Zirinis pointed out that practitioners need to be aware that clients may not appreciate that the tax definition of ‘charity’ varies across jurisdictions, and that, if the term is too narrowly drafted in a trust, the beneficiary’s charitable goals may not be able to be met from the trust. Separately, from the investment perspective, he noted that trustees can be put in a difficult position if the beneficiaries wish all their trust investments to be tied up in ‘socially responsible’ investment vehicles.



‘As practitioners, we have to do a huge amount of homework around this,’ said Younger. ‘We have to be educating clients on an ongoing basis, because otherwise they could well be thinking of their duties to the US [Internal Revenue Service], when in fact the UK might be their primary tax jurisdiction. They’re not intentionally doing something wrong, but they might not have thought of, or even know about, all the potential tax complexities.’

### PROTECTION FROM RISK

It is these complexities that occupy the concerns of wealth management practitioners, especially when working with families either resident in, or with funds managed in, various jurisdictions globally.

Tax reporting requirements internationally are becoming increasingly

onerous, in alignment with the global standards set by the OECD, while privacy of information and cybersecurity are of key concern to wealthy families seeking to manage their money in the most tax-efficient way.

‘Recently, Guernsey, the Isle of Man and Jersey announced that they will move to implement public registers of beneficial ownership as part of a staged process set out by the [EU Fifth Anti-Money Laundering] Directive, but have stressed they will not be open registers,’ said Kempster. ‘This has led to clients asking what we intend to do with their data, how this will impact structures set up many years ago and how we plan to safeguard their anonymity going forward.’

McKeever agreed, arguing that increasing transparency can have unduly harsh consequences for honest taxpayers: ‘People who thought they were fully compliant are finding themselves caught out by some tiny oversight, and are being hit by penalties that are just as strict as they are for those people who have deliberately evaded tax.’

With more and more countries fully aligning themselves with global reporting requirements, it is likely that practitioners will increasingly have to deal with the complexities of reporting information across numerous jurisdictions. For internationally mobile families, then, there is a much wider discussion to be had than simply how to keep structures tax efficient as they look to protect the family wealth, but also remain flexible and become philanthropic.

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