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FINDING A JURISDICTION OF CHOICE

Deciding which structures to set-up and where to locate them is an increasing cause of debate and uncertainty among practitioners, amid the glare of ever-brighter regulatory and tax spotlights, said panellists at the Hubbis Asian Family Wealth Forum 2014 in Singapore in November.

PANEL MEMBERS

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The tougher regulatory and tax frameworks which everyone is now subject to are starting to have a significant impact on the types of structures which are appropriate for wealthy clients – and also which jurisdictions they should be set up in.

In turn, this is creating new dynamics and approaches to the way in which wealth structuring and tax planning is done, said panellists at the Hubbis Asian Family Wealth Forum 2014 in Singapore in November.

Across the board, the complexity which has been introduced through the various regulatory and tax reforms needs to be considered.

"We have been using private trust companies and other trust structures, which are classically good for clients," says Peter Brigham, managing partner of Rosemont.

However, he adds, there are now many different issues today which are influencing these types of structures.

These include, for example, exchange of information (EOI) issues, FATCA classifications and different regulatory initiatives – also including rules for corporate services providers.

"The whole environment is changing with the new tax rules," says Shanker Iyer, founder and chairman of The Iyer Practice. "In relation to structures, we are finding that there is a flight to quality in terms of the jurisdictions being used."

PETER GOLOVSKY

Amicorp Group

As a result, Singapore and Hong Kong are playing a more important role compared with some of the traditional financial centres and offshore hubs, he explains. In addition, developments in Singapore such as an audit exemption regime, which Iyer says will eliminate audit costs, will further increase its appeal over time, at least from a cost perspective.

Other speakers also confirmed the trend towards more onshore structures, and included New Zealand in the list of favoured locations.

> **"In relation to structures, we are finding that there is a flight to quality in terms of the jurisdictions being used"**

Yet this doesn't mean the outlook is bleak for offshore jurisdictions such as the BVI, Cayman Islands, Seychelles and others.

"I see more sophisticated structures being set up in offshore centres," says Markus Grossmann, managing director at Trident Trust.

Further, adds Peter Golovsky, managing director and global head of private clients for Amicorp Group, research his firm did in conjunction with Scorpio Partnership in mid-2014, highlighted an estimated 475,000 trust structures globally, with US$5 trillion in estimated wealth held in offshore structures. This also meant that under 5% of global high net worth clients are currently using trusts, with an expected annual growth of the trust market at approximately 10%.

Ultimately, there is now more of a level playing field, providing the structures meet local requirements, says Golovsky.

More specifically, Iyer says that in terms of counterparty transactions, there are issues when dealing with certain countries.

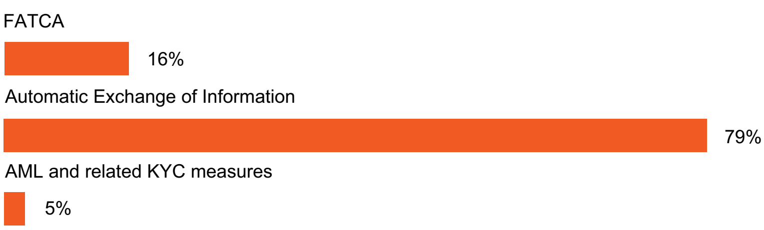
As a result, understanding how different jurisdictions work and their impact on tax aspects of structures is vital. That also relates to the process of opening bank accounts. "There is now much more of a requirement for substance," says Iyer.

A GROWING COMPLIANCE BURDEN

While FATCA marked the beginning of this shift, the automatic EOI regime which is gaining global traction takes transparency to the next level, explains Golovsky.

In line with the new requirements, he says compliance must be at three levels: the

WHICH TRANSPARENCY INITIATIVE IS CAUSING CLIENTS MOST CONCERN?



Source: Hubbis Asian Family Wealth Forum 2014

MARKUS GROSSMANN

Trident Trust

to keep up-to-date with the various guidelines," he explains.

For example, he says, it remains unclear how to deal with issues relating to residency and people with non-domiciled status. "Yet everyone is expected to start exchanging information next year," adds Brigham.

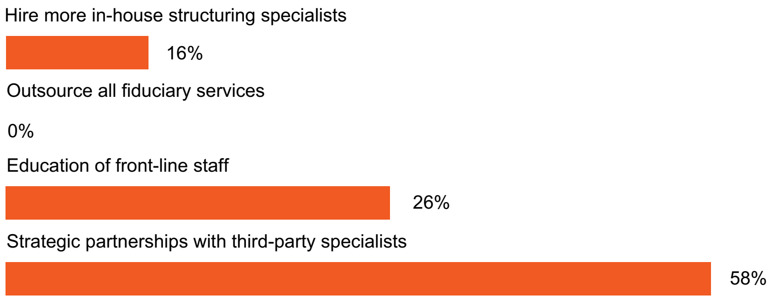
Even the OECD has admitted that developments are moving too quickly, based on pressure from the G20 to get legislation in place.

jurisdiction in which the entity is set up; the home tax residence of the ultimate beneficial owner (UBO); and the UBO's current place of tax residence.

But while the goal of advisers and professional services firms is to reduce the complexity as part of conversations with clients, the reality is that there are still huge areas where FATCA is unclear, including conflicts between different parts of inter-governmental agreements (IGAs) and regulations, says Brigham.

"We are supposed to be applying the regulations already, but even some of the renowned lawyers I know find it difficult

WHICH IS MOST DESIRABLE TO HELP RMs TACKLE NEW REGULATORY & TAX REGIMES?



Source: Hubbis Asian Family Wealth Forum 2014

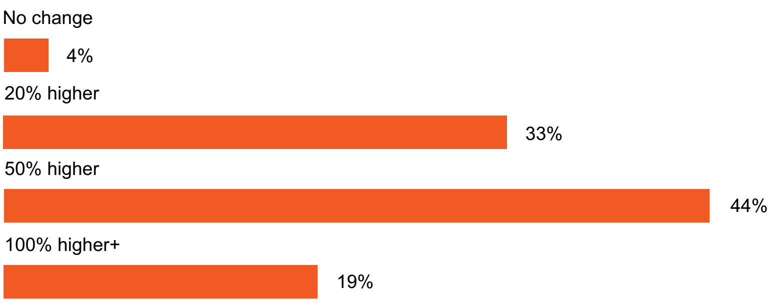
"A lot of issues need to be resolved very quickly and resources allocated to doing so," says Brigham.

While this is happening, the costs of compliance have inevitably been rising.

According to a sentiment poll of the audience of wealth management practitioners at the Forum, around three-quarters said they think these costs will rise by 20% to 50% within 12 months; 44% of the audience said they think it would be 50% higher.

"This [figure of 50%] makes sense," says Golovsky, "especially given the challenges

HOW WILL THE COST OF COMPLIANCE CHANGE IN THE NEXT 12 MONTHS?



Source: Hubbis Asian Family Wealth Forum 2014

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Rosemont

the banks face, and the fact that they are talking about how they can roll out their FATCA training programmes."

Part of the challenge, however, is finding enough compliance officers in the first place who are trained on the relevant issues. Many international firms, in particular, have already spent vast sums on meeting their compliance obligations.

The key thing from Brigham's perspective, is how much will be passed on to clients.

Grossmann, meanwhile, sees the biggest costs going forward relating to training. "It is about increasing the awareness of the bankers [of these issues]."

A NEW APPROACH TO ADVICE

The regulatory and tax complexities are also driving the need for more individualised advice for clients.

To achieve this, both they and their wealth managers need to find experts which can advise them on their specific needs, adds Brigham.

This is easier said than done. With the multiple challenges in conjunction with new potential reporting duties and tax liabilities for different parties in various structures, legal and tax advice alone are not sufficient to provide all the answers. "It is important to deal with people who have the necessary experience in specific matters," say Grossmann.

Highlighting the new controlled foreign companies (CFC) rules in Russia, he explains the importance of working with locally-based advisers who know what actions might be detrimental to the trust structure. "It isn't always necessary to have specific tax or legal advice in relation to such issues," adds Grossmann, "but instead it is important to get an experienced perspective."

FINDING STRATEGIC SOLUTIONS

In response to the emerging challenges that banks and other advisory firms now face with onboarding and managing clients, they are considering alternatives.

For example, explains Golovsky, banks are critically examining what they view as core and non-core to their businesses. "That includes where the fiduciary business sits in terms of risk profile," he adds. Outsourcing to professional services firms like Amicorp is one option, to create a different delivery model for this part of the business, he says.

While this is at one end of the spectrum, perhaps a more likely solution that many wealth management firms will consider – at least according to the results of an audience poll – is forging strategic partnerships with third-party specialists.

Especially in terms of their trust businesses, Grossmann says it has become very important to be able to call on individuals with the right practical experience rather than manage the risks themselves.

However, this also places more pressure on trust companies and corporate services providers, in terms of ongoing demands to keep up with requirements. ■

SHANKER IYER

The Iyer Practice