

Many River to Cross on the Journey to Effective Estate & Succession Planning in China

Are HNW and ultra-HNW Chinese families from the Mainland adopting the appropriate strategies to enhance their business and family governance, to organise more structured and professional wealth planning and then to organise more effective estate and legacy transition? Tax expert Michael Olesnicky is a senior consultant based in Baker McKenzie's Hong Kong office and plies his trade across the region. A former Asia Pacific Chair of the Tax Practice, from 2000 to 2014, and during those years a member of the firm's Global Tax Steering Committee, he offered some valuable insights during the December 3 Hubbis digital discussion event on Mainland China, business and family governance, and effective succession & legacy planning.

The connection between

family and family business wealth in China is as deep as ever. By some estimates, family businesses in China are the most significant sector and contribute 70% of national GDP, employing around 75% of the nation's workforce. It is therefore of vital importance to them and to the nation at large how they deal with intergenerational wealth transfer and business succession. And it is just as essential to understanding how they are going global and building global enterprises that, to some extent, match the globalisation of their family wealth and lifestyles.

Reaching out

The wealth and advisory industry has been making great efforts to work with these families to help advise them of their family and business governance, including potential mechanisms such as family constitutions and family councils, and to help them see the connections and to assist them in building their family legacy, potentially their family dynasties. As Mainland Chinese families have also diversified well beyond their home bases in China, the perspectives and the solutions must be global in outlook and impact – the optimal structures must be imagined, devised, and then continually refined to ensure that these families can operate and live and transfer wealth in a globally compliant manner.

Two-way traffic

The Mainland China domestic tax law changes of 2019, including anti-avoidance provisions and revised residency rules and so forth, should be seen as overlaid with the whole global edifice of regulation,

supervision, and enforcement, Olesnicky reports. "With the Common Reporting Standard, for example, the Chinese tax authorities can now obtain all the information about bank accounts and securities accounts and certain types of insurance policies that are held by Chinese residents outside of China. The situation has therefore changed significantly in recent times."

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Guarding against complacency

However, he also comments that while China is obtaining or able to obtain all this information under CRS, he had not heard of this actually being used to conduct tax audits or investigations, at least not yet. "I suppose that will occur over time," he says, "but this is potentially somewhat of a concern if it does not take place. Why? Because if there is no action taken by the authorities, a certain complacency amongst Chinese residents will likely develop."

Accordingly, his premise is that the wealth management and legal and accounting and trustee industries must keep pressing home the message to their clients that they cannot simply continue to hide their assets offshore and not strive to be totally compliant. "On top of all the information exchange on banking and securities accounts and life insurance and so forth, we

are likely soon going to have an exchange of information about real estate holdings, further increasing pressure on these clients to be compliant. In short, action must be taken; it must not continually be put off until later."

Not an easy road to compliance

But Olesnicky also appreciates that taking the right steps for Mainland

China clients to become compliant is not as easy as it might sound. "How do you actually regularise?" he pondered. "If you have not been compliant, where and how do you actually start? The reality is that China has not introduced any type of tax amnesty programme."

And if he is struggling with this issue, most definitely everyone else will be as well. Australian by origin and a multi-decade Hong Kong resident by choice, he has more accreditations to his name than almost anyone else in Asia's world of tax advisory and wealth management. He has practised for over 25 years in Hong Kong and Asia on regional tax advisory work, tax disputes and litigation, as well as wealth management and estate planning. And amongst other important highlights, he is also Honorary Lecturer in tax law at the Hong Kong University Department of Professional Legal Education.



MICHAEL OLESNICKY
Baker McKenzie

Leveraging a multi-decade expertise

As such, there are in practice few lawyers with more experience in these matters, and very few working in the field of wealth management better at understanding precisely how the pieces of the global regulatory jigsaw fit together.

"I am the current chair of the Hong Kong branch of the Society of Trust and Estate Practitioners," he explains, "and I can report we have written to the PRC state tax administration suggesting that the authorities do consider an amnesty or some type of procedure to allow people who have not been compliant to become compliant. Thus far, we have not had a reply, so, in reality, we cannot envisage any such amnesty ahead."

Tax amnesty unlikely

Perhaps, as many experts maintain, such an amnesty, while good in theory, is either too impractical or too politically sensitive a project to embark upon. "Whatever the hesitation or impediments," he comments, "the reality is we have to try as best we can with the

current situation to regularise things over time."

Olesnicky raises another issue, regarding new clients his firm might plan to take on. "When banks and trustees and even lawyers consider taking on new clients," he reports, "perhaps people who might not have been compliant and who are compliant now, or plan to be, we all have to conduct an AML procedure and follow a KYC protocol, which means we must look at the source of funds, and we have to satisfy ourselves that the clients' funds are legal, and all is as it should be. But if those funds are in fact the product of tax evasion, then we have an issue from a money laundering viewpoint."

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These matters clearly raise some major questions that firms such as Baker McKenzie and of course, other law firms must address professionally, and it is clearly far from easy.

KYC and AML hurdles

"For example," Olesnicky reports, "I have a couple of clients who I am absolutely convinced of being tax compliant in the past, but they can't prove that to the satisfaction

of trustees to whom we have introduced them. The result of that is a question over how they actually deal with professionals? And how do they deal with trustees? How do they deal with private bankers? How do they deal with ordinary bankers? If they cannot actually prove what the source of their funding is, then onboarding with any firm or institution becomes a massive hurdle to overcome."

But there are plenty of positives for Olesnicky and for the firm, and given the massive increase in China's GDP in the past two decades and of course in its private wealth generation, there is due cause for optimism about the future. The HNW and UHNW community has expanded rapidly in recent years,

and law firms as well as the wealth management community have been working harder and harder to build their connections for today and the future.

Connecting to the nextgens

"I strongly advise the advisory community to try to connect to the younger generations in the PRC as early as possible," Olesnicky says. "It is often difficult

dealing with older G1 clients, who tend to be more set in their ways, and less receptive to new ways of looking at these matters of estate, legacy and succession planning, better governance, full compliance and so forth. "I think one of the issues with Mainland Chinese families is sometimes there is a tendency not to involve the next generations, but these younger generations from China are often more receptive to instigating the right sorts of discussions on these topics."

Younger and well-educated

Many of them, he notes, would have come back from top establishments around the world, the top universities, holding top MBAs, perhaps having worked in Western financial or other institutions. "In short," he observes, "they are sophisticated in their outlook and understanding of such matters, and we often find when they return home, they are the ones who realise that something has to be done to professionalise

and regularise many of these concerns over estate planning, governance, and legacy planning."

His final comment is slightly tongue in cheek. "If you can engage these younger generations, they are often the best at channelling ideas and convince their parents of what to do. And that, very frankly, can be sometimes more effective because parents might listen to them, but they will not always listen to outsiders such as me, surprise, surprise!" ■

