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The Challenges of Delivering Advice and Relevant Structures Across Multiple Jurisdictions

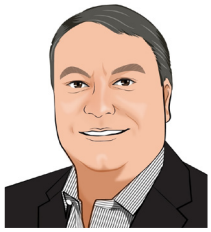
We live in a world of increasingly complex and pervasive regulation and increasing scrutiny from the tax and other authorities across the globe. Accordingly, offering the right advice to private clients to either formulate new wealth structures or remediate their older structures is especially complex these days. There is today a more compelling argument to construct or adopt a combination of onshore, mid-shore and also offshore structures, but for banks and independent wealth management firms to construct and deliver the right advice with a genuine multi-jurisdictional perspective requires great expertise, as well as the ability to leverage relationships across the world of professional services, from trustees to lawyers, tax advisors, accountants, life insurance experts, investment migration experts, offshore IFCs and many more. Asia is certainly a region of immense opportunity in these areas. The older/founder generations who are holding so much of the 'older' wealth and the traditional businesses are passing on vast swathes of wealth to the second and third generations, even beyond. There are more and more wealthy and uber-rich entrepreneurs across the region, with new multi-millionaires and billionaires being minted at an incredible rate in countries such as India, China, Vietnam and elsewhere. Many of the younger generations are returning from overseas armed with their Western education and plans for the future, ready both to inherit this vast wealth, or to build the enterprises to create tomorrow's economic dynamism. For all of these different generations and no matter what their background or education, well imagine and devised wealth structuring is absolutely essential today. The Hubbis Digital Dialogue of October 28 focused intently on these key issues, covering the curation and adaptation of optimal wealth structures, as well as robust estate and succession planning solutions, all key areas of rising prominence for forward-thinking private clients in Asia.

SPEAKERS

MICHAEL OLESNICKY
Baker McKenzie

DOMINIC VOLEK
Henley & Partners

PAUL KNOX
JP Morgan
Private Banking



ANDY ROBINSON
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ZAC LUCAS
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A guest opened proceedings by observing that the world of structuring and the evolution of regulation are set against the backdrop of governments needing money and that there is widespread debate about how to raise that, raising the prospect of new or higher wealth taxes and death duties, even in places such as Hong Kong or Singapore, surprisingly. Another potential is for higher sales/VAT type taxes. China has long considered death duties and wealth taxes. Governments, he warned, were looking at expanding their residency definitions to bring more people into their tax nets, with Australia a very good example of that. Governments are also looking at tax amnesties to bring more money home and keep it there.

He highlighted other initiatives on the global stage, mostly focused on big companies, but for UHNWIs, there are implications of course around the minimum corporation tax proposals coming out of the US in particular. He warned that those with consolidated revenues of EUR750 million and above would be affected, and there are plenty of UHNW families in Asia that fall within that category.

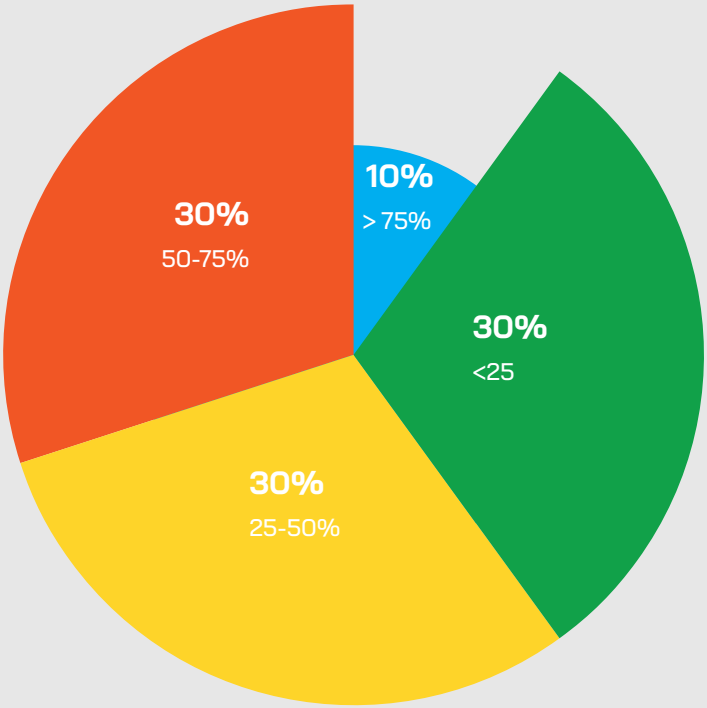
"If you have a traditional trust-owned structure, there will often be an underlying company that owns all of the companies, and that underlying company will be the consolidated group," he cautioned. "It may make sense sometimes to get rid of the consolidated holding company, and simply have different business units being owned directly by the trust through operating companies. That may or may not, depending on the situation, be enough to avoid consolidation for minimum tax purposes, and save your clients a lot of tax."

Expert Opinion

PAUL KNOX, Managing Director, JP Morgan Private Banking

"How do bankers and advisors work effectively with other professionals to deliver the best advice to their clients? The answer is that advisors working collaboratively as a team produce the best advice for their clients. An additive to collaboration is advisors who can maintain objectivity and have the capability to understand the complexity of the matters at hand, which usually comes from prior experience in the legal, tax or trusts field. This prevents issues falling between the cracks and makes it all the more important to continue to remind clients of the issues to address outside of our respective disciplines, even when many are cost conscious."

APPROXIMATELY WHAT PERCENTAGE OF YOUR PRIVATE CLIENTS IN ASIAN TODAY HAVE WELL-ORGANISED WEALTH AND ESTATE PLANNING IN PLACE?



The need to consolidate family wealth and organisation

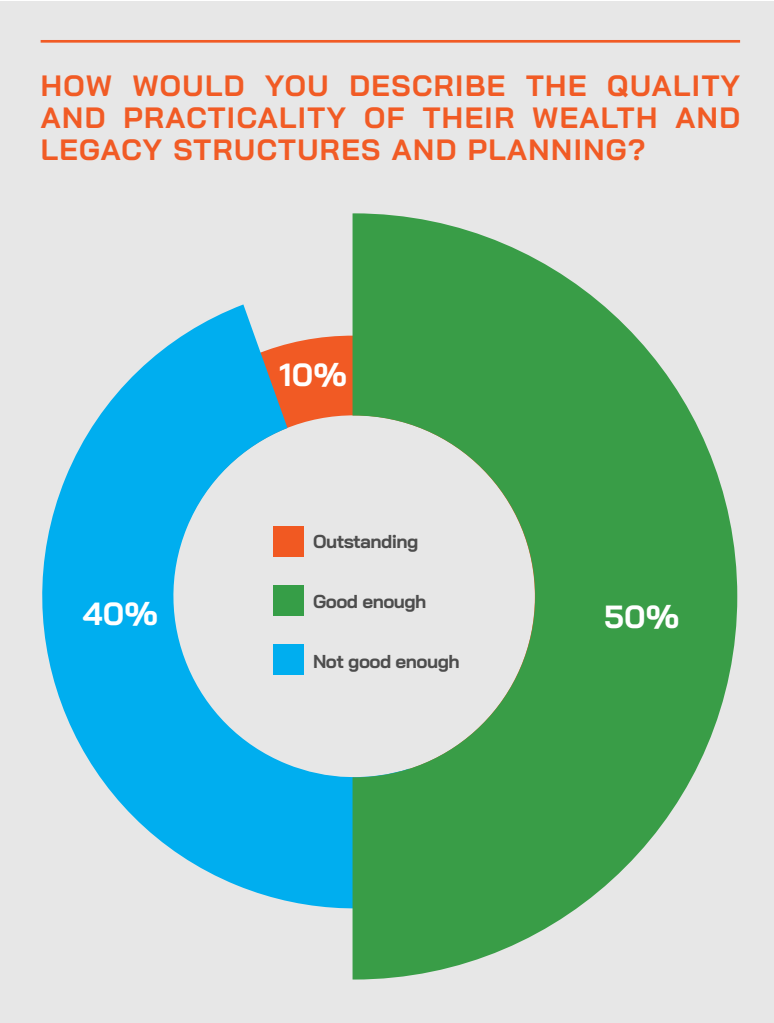
Another guest highlighted the trends to consolidate wealth, which had resulted in the rise of the family office, especially in Singapore in the Asia region, with family members and key management also centralising in one location that is a welcoming jurisdiction offering the right tax, visa, education and healthcare as well as lifestyle environment. "There are plenty of Asian families doing this to bring multi-generational planning together, and we see more European wealth coming to Asia for those reasons, and for tax planning.

"It is still a vibrant market and I think that in terms of the sophistication that's needed going forward, it's only going to go increase, particularly with respect to some of the items that are going to have to deal with which is the constant erosion of privacy when it comes to these structures," he commented. "On the other hand, some families might become more geographically spread out, for example some of them becoming resident in other locations such as the Caribbean or some EU countries. It depends really on the particular demographic and the motivations behind, and also where the families are in their life cycles. For example, China is typically still first generation, whereas in Southeast Asia it's very much second or third generation. And then Europe is probably fifth generation and up. All leading to different requirements."

Clients are all unique

A banker on the panel observed that there are different types of clients. There are those who seek a dynastic approach to their wealth and continuity, others who approach wealth more hedonistically for their pleasure in their lifetimes, some who are cautious and do not like to spoil their children, and so forth. He said the characters span the entire spectrum, and their inclinations partly determine the right approach to their wealth, estate and succession planning.

"You have to start the conversation by really understanding what it is the client is trying to achieve, and then help them to achieve those goals," he advised. The first step is the Will, and it is incredible to me how many people start with structures before they even have a valid Will. That is the starting point, and then my clients usually later arrive at some form of trust, or corporate structure, but not always, and obviously, the forms the trust can take can be very different as well."



Remediating older structures

A panellist pointed out how many clients in Asia have older structures, for example BVIs they no longer see as fit for purpose, that they either wish to close or reorganise along with other structures that are more fitting for the world of compliance and regulation today.

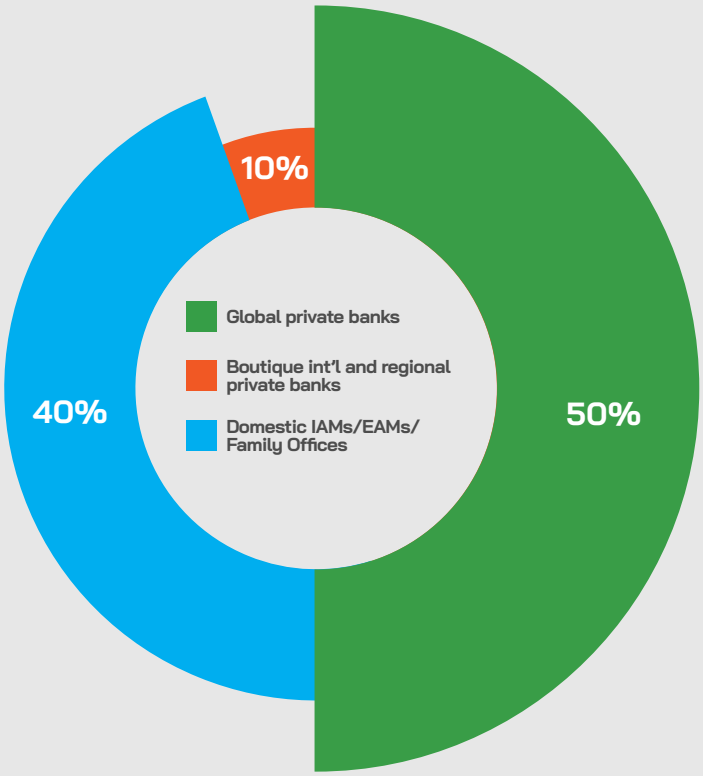
He also pointed to concerns over privacy in some of the more exotic locations, as evidenced again quite recently with the Pandora Papers revelations.

"Many clients in the region will have historic Caribbean structures, and historically they will have plenty of BVI companies. And as things are going now, you're going to have potentially publicly accessible beneficial ownership registers on those BVI companies going forward. The Paradise, Panama and now Pandora papers exposés, along with potential data leaks are worrying. And what we are moving towards in some of the jurisdictions is a more formalised and systemic operationalised leak via these publicly accessible registers. Now, many clients are in countries where there is significant corruption or crime, and to have this information public can spell dangers for themselves and their families, so we can see there are real-life consequences and dangers, real security risks."

Careful about who you play with...

He added that, unfortunately, we are moving into a two-speed globe with this with the European Union and UK, the British Overseas Territories, and even the Crown Dependencies trying to force a greater opening up of registers to the public. "And then we've got the rest of the world and those under FATF who are quite happy to have a different approach where public access to this sort of data is actually not readily available," he explained. "It is challenging for advisors in this region to keep up to date with all the latest announcements and changes, and therefore give the best recommendations on how

WHICH BANKS, OR WEALTH MANAGEMENT FIRMS ARE LEADING THE WAY FOR ASIA'S PRIVATE CLIENTS IN WORKING WITH TO ACHIEVE THEIR WEALTH AND LEGACY STRUCTURING?



Expert Opinion

MICHAEL OLESNICKY, Senior Consultant, Tax & Wealth Management, Baker McKenzie

"We have seen more clients talking about moving away from structures that are complex involving many jurisdictions and service providers. Over recent years this has led to increased compliance burdens due to developments in KYC and AML, CRS/FATCA, economic substance requirements in the offshore financial centres and beneficial owner disclosures. Consolidating structures and service providers and even moving structures back to one's home jurisdiction can make life a lot easier. It's counter-intuitive, but moving structures into the US can offer some relief as well, at least for now."

these changes impact existing or planned structures. There are so many different rules for trusts around the world, so many rules on beneficial ownership, on substance, and so forth, all whilst trying to maintain data privacy as well. In short, the advisors are increasingly challenged by all these complexities."

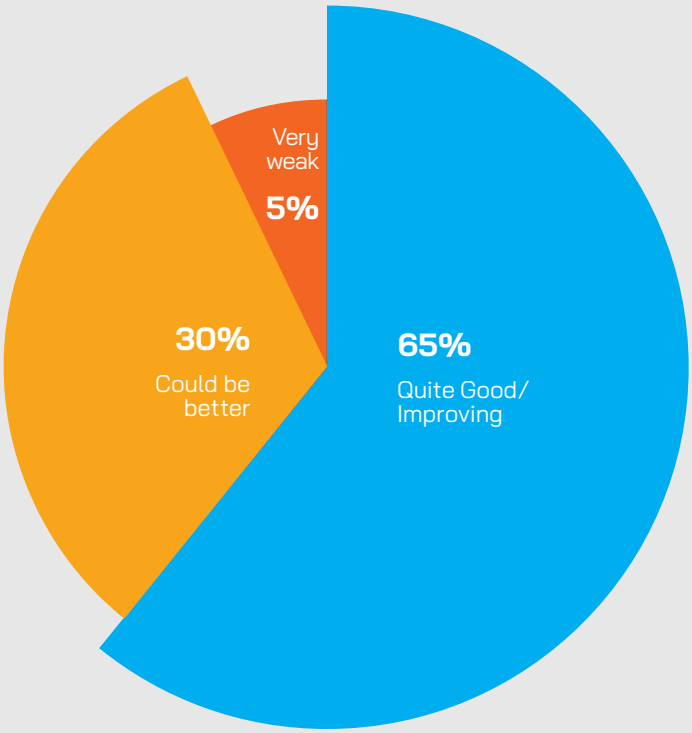
He conceded that in the past, advisors had been somewhat behind the curve on all this, but that is not possible in a world of intense regulation, enhanced and invasive scrutiny from all quarters, pressures on anti-avoidance and the drive to mandatory disclosure.

IFCs – reputation and experience count big

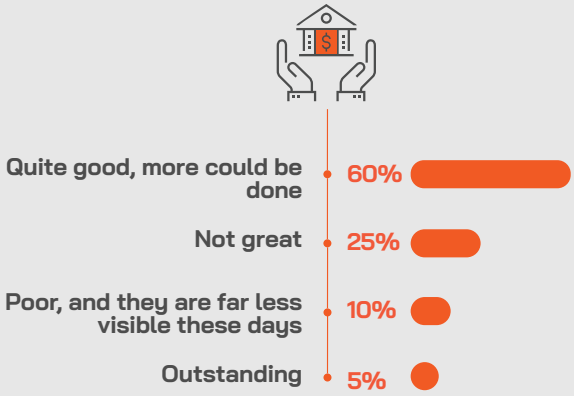
Another guest commented that given the current environment, the reputation and expertise and credibility of international financial centres (IFCs) have become even more important for discerning clients, especially the ability of those IFCs to contribute significantly to cross-jurisdictional wealth planning, supported by the full array of structures from trusts, foundations, funds and fund management, insurance and banking, all underpinned by the principles of ESG, green and sustainable finance and impact investing.

"Key underpinnings," he reported, "include consistency, strong and flexible regulation, proper substance and a deep pool of highly qualified and creative professionals with a reputation for quality and innovation. The ability to serve the retail and institutional investment community is essential, as well as handling family office needs, a highly important part of our offering."

HOW EFFECTIVE IS THE WEALTH MANAGEMENT INDUSTRY IN ASIA IN REACHING OUT AND WORKING WITH THE NEXT GENERATIONS, BEYOND THE PATRIARCH/FIRST/FOUNDER GENERATION?



HOW EFFECTIVE ARE THE OFFSHORE FINANCIAL CENTRES IN COMMUNICATING THE VALUE AND SCOPE OF THEIR PROPOSITION FOR THESE CLIENTS?



Avoiding complexity wherever possible

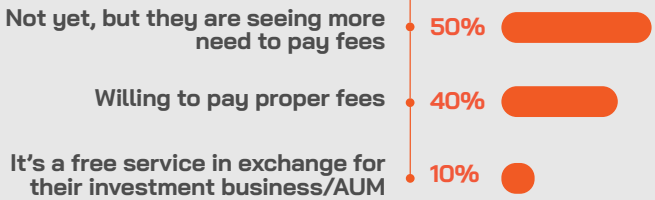
Another guest pointed to the complexity of many older structures, which might often have been designed to hide assets, whether from spouses, or creditors, or whatever. "But we now have the drive for a lot more transparency in offshore jurisdictions, making many such structures no longer fit for purpose, and they have also become too onerous and difficult to maintain," he commented. "I even see occasionally discretionary trust structures that were set up for Hong Kong clients, with the old unit trust arrangements under them set up to avoid estate duty, but that was actually abolished in 2006, yet they are still in place. The result is that the big trend is we are less concerned about structuring and perhaps more focused on some of the softer issues facing a family, such as facilitating succession of assets within a family, ensuring the family is harmonious, educating and encouraging family members on their future roles, on responsible stewardship of wealth, and so forth."

Remediation of older, over-complex structures

He concluded that advisors therefore need to discuss these matters with clients and modify or rectify structures and simply the entire edifice a client might have constructed in the past. "We are moving on from just structuring asset holding arrangements into mechanisms that make these arrangements work for the families," he remarked. "And the role of an advisor here is to be involved in facilitating the discussions and the planning within the family to avoid that, to enable the proper family management of assets going forward into the next generations."

Accordingly, the key trends include a move away from complexity, certainly a move away from having companies in too many jurisdictions, a move away from having too many service providers. "The more complexity, the more you find yourself caught up in things like KYC and AML procedures with all of the providers and banks and service providers and trustees that you're dealing with, and it complicates CRS and FATCA reporting if you have too many entities, there are Economic Substance requirements in these offshore jurisdictions, and as a result of all these elements, the simpler we can make the structure, the simpler we can make those compliance requirements going forward."

ARE ASIA'S PRIVATE CLIENTS WILLING TO PAY THE NECESSARY FEES TO BUILD REALLY THOROUGH WEALTH AND LEGACY PLANNING OR DO THEY CONSIDER THIS A FREE SERVICE?



Expert Opinion

MICHAEL OLESNICKY, Senior Consultant, Tax & Wealth Management, Baker McKenzie

"We are seeing a trend away from structuring into a focus on softer issues, such as facilitating succession of assets within a family, ensuring family harmony, educating family members about their roles within the family and their responsibilities as stewards of the family's wealth. Part of this is due to the fact that convoluted structures aren't as effective as they used to be, and the other part is due to a growing realisation that there is much more involved in managing wealth than mere structuring – a key factor is managing the family."

He added that clients are increasingly receptive to the notion of bringing some part, if not all, of the structure back to their home jurisdiction. A Hong Kong citizen, for example, with everything he or she has in Hong Kong has no CRS, no FATCA, KYC becomes a lot easier, there are no Economic Substance requirements, and it all becomes remarkably straightforward.

Moving mid-shore

A fellow expert agreed, also commenting that, nevertheless, clients still like to have some diversification sometimes of having at least two areas or two different types of structures with at least one pot in what they believe should be a highly safe jurisdiction.

"I think the onshore against midshore against offshore debate is a very interesting one at the moment," he observed. "When I was based in London, if you'd asked me this question two years ago, I would have said, nearly the whole trend is for money to come back onshore, especially with such heinous penalties for failing to disclose offshore assets correctly. I then actually relocated to Hong Kong two years ago, and it has been nice to be in a place where we could talk about offshore again, and where there is a role for offshore companies and offshore structures."

He also remarked that older clients feel more need and less guilt about offshore structures. "With the world's taxes much more levelled out, there is less of a tax drive today," he explained. "But many of the older generations recall tax rates of 80% or more, which they remember essentially as governmental theft leading them to have a moral justification for

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DO YOU THINK THERE IS A MUCH MORE ACTIVE DRIVE NOWADAYS TOWARDS PROFESSIONAL WEALTH, LEGACY AND SUCCESSION PLANNING AMONGST PRIVATE CLIENTS AMONGST ASIA'S HNW AND UHNW CLIENTS? WHY, OR WHY NOT?

- Yes, in the intensely regulated world we all inhabit today, especially after the introduction of CRS and FATCA, as well as the arrival of the pandemic, as well as sustainability issues around our planet, underlining the fragility and uncertainty of life.
- Yes, greater awareness by better educated next generations and the older generations have resulted in problems arising or being more evident amongst families where there has been no or minimal planning.
- Yes, because there will be vast wealth transfer from Asia's elderly HNW and UHNW individuals to the next generations, most of whom are educated and well prepared for their wealth planning.
- Yes, wealthy families understand and feel the need for consolidation of wealth spread across jurisdictions, challenges faced by friends and families in succession planning, general awareness and awareness created by the family advisors.
- Yes, new generations of HNW clients are generally more educated and more aware of the importance of planning in advance for various matters, be retirement or estate or succession planning.
- Yes, I believe so. There are many reasons for this including the increased mobility and globalisation meaning there is a greater need to get the right advice to ensure that the wealth can be accessed and protected wherever in the world the next generation base themselves.
- We see most of the increased demand centred on elevated and more robust succession planning.
- Yes. Why? Tax, tax, tax.
- They tend to go mid-shore and offshore nowadays, some because of political and tax reasons.
- Offshore, to diversify their risks.
- It depends on where they live. In Hong Kong for example

trying to sidestep such excessive demands. To be fair, as the rates of tax globally have generally come down to a much more acceptable level, it has become questionable how far you want to need to push your tax planning."

Keeping on the right side of the line...

He observed that wherever people are in the world today, they generally want to make sure that whatever they are doing, whatever structures they are entering into, that the reputational risk for them is very small, that they are above board.

"Offshore jurisdictions remain viable and valid," he commented, "and also offer that distancing from perhaps unstable or uncertain states and governments, perhaps distance from ethnic or religious persecution, and so forth. Having all the eggs in one basket if you come from certain countries is not wise if you have the wealth and choice to diversify. And the pandemic has reinforced and exacerbated that perspective. Think of some countries in South America, for example, where data derived through CRS is being used to target families in what is little more than expropriation. Not all countries have robust and viable rule of law and stability, there is plenty of corruption around the world."

He added that there are many benefits of investment migration for HNWIs and families who come from such corrupt countries, or even mildly corrupt jurisdictions, but that proper and robust planning must be applied to the process to ensure they end up making the right commitment, rather than simply acquiring the rights to open the door.

they can stay mid-shore, but they may want a trustee at arms-length from China.

- Mid-shore and offshore in order to explore more opportunities and for diversification.
- Depends on their home jurisdiction. More and more in Asia are trending towards Singapore which is politically stable and welcoming.
- It's a combination of all three. However, in the years to come there will likely be a huge attraction for mid-shore and onshore jurisdictions for clients to demonstrate substance. Offshore can indicate a wish to hide assets, even if the reasons are more altruistic and legitimate.
- Onshore, given more transparency in all kinds of reporting such as CRS reporting, declaration of beneficial ownership and so forth at the trust structure or company level. Having said that, offshore structures may still be suitable for some clients depending on their concerns or rationale of having the structure offshore.

Expert Opinion

MICHAEL OLESNICKY, Senior Consultant, Tax & Wealth Management, Baker McKenzie

"Companies and trusts in traditional offshore financial centres can have advantages – they don't offer an opportunity to hide assets from prying eyes because of all the recent developments involving transparency, but they remain often less expensive to establish and maintain, there are no audit requirements, they are more flexible to operate and they are easier to get rid of. There will always be a demand for offshore companies for the sake of convenience, but increasingly they can be suspicious to outsiders."

Investment migration

An expert pointed to how residence by investment and citizenship by investment has moved even further centre stage for wealthy Asian and families since the pandemic, spurred by mobility, security, access to enhanced healthcare proximity to offspring studying overseas and so forth. After the initial hiatus while everyone adjusted to the pandemic, he said there had been a real spike in activity in the emerging markets, especially clients in Asia from India, China, the Philippines, Indonesia and so forth. He also noted how Tier 1 countries had seen increased demand, especially

from US clients, and also for UK clients who might already be in Asia as expats and seeing the implications of Brexit.

"So many families have realised the value of having a diversified residence and citizenship portfolio," he reported. "It is not enough just to have one citizenship or one residence for them. If you're wealthy, and of course, you are financially independent, then as much as you diversify what you invest into, you should also be diversified in your options of where you can reside, what countries you can enter."

"We have seen a lot of our UHNW clients acquire European citizenship," he concitnued. "For example, if they were in emerging markets in Asia where the vaccine rollout was very slow, they could get on a plane, go to Europe and get the vaccine as residents or citizens there. The topics we discuss with clients now have those added extra elements around healthcare, pandemic preparedness, access to vaccines, the difficulties of travelling regularly, and so forth. Add to this the concerns over privacy and security, and these conversations are much more commonplace and normalised, with residence and citizenship planning part of robust wealth, estate and legacy planning these days."

He also highlighted how the optionality these programmes offer also allow for flexibility, as they generally do not demand the clients move physically but can instead spend only a matter of days each year in those countries in order to be and to remain eligible.

He told delegates: "I mentioned earlier the US has become a single

The Hubbis Post-Event Survey

IS THE AGE-OLD TRUST STRUCTURE STILL VIABLE, AND HOW SHOULD THESE BE USED AS PART OF SMART WEALTH STRUCTURING IN THIS DAY AND AGE?

- Yes. Trusts are still very relevant for structuring as part of the overall planning. Also, it is important to keep assets out of probate (or the equivalent) wherever possible.
- Yes, they could be used to protect the existing wealth and are still part of smart wealth structuring in this day and age.
- Yes, they are still viable but more for succession planning than any tax mitigation.
- Yes, for disciplined distribution of wealth. Trusts continue to seem fully reliable to most older HNW clients.
- Yes, they are still viable for wealth distribution.
- To some extent, yes, but in the current scenario all structures need to be reviewed keeping in mind the family's tax residency, asset situations and any family's long term objectives. Once the objectives are clear it is easy for an advisor to simplify structures, unless there are assets which could trigger stamp duty or capital gains.
- The old structure may still be viable but more education of the clients and beneficiaries is necessary and important to make them fully aware of the arms-length relationship to trustees involvement, and therefore those trusts involvement in the family's futures in order to fulfil the trustee's fiduciary responsibilities and/or regulatory obligations.
- Yes, in Common Law environments, but in civil law jurisdictions, not really.

Expert Opinion

MICHAEL OLESNICKY, Senior Consultant, Tax & Wealth Management, Baker McKenzie

"More recently there are growing concerns about lack of privacy and reputation issues, and people may be forced to scramble to explain why they have opaque structures based in an offshore tax haven which are being regarded with increasing suspicion by the media, the public and parliamentarians."

biggest market for new clients, and the media portrays this as a huge wave of renunciation, but actually with everything that has been happening and might happen ahead, those people and families simply want what they are permitted to have, namely a second citizenship or residence or multiple of those. They want to have those in place in case something happens down the line, so they have an alternative route that they can take. That's what it boils down to."

Above board

He also debunked the myth that people are simply trying to avoid tax by becoming tax nomads. It is incredibly tough now to not have a tax residence, and bank and other accounts become incredibly tough if you are of no fixed abode. "It sounds good to sort of just cruise the world on a boat, but in reality, it's very difficult in terms of financial account management and handling the various structures that you would have in place," he observed.

As to favourite destinations, he pointed to Portugal as very interesting from a tax perspective with the non-habitual residence tax scheme that they offer, as well as providing excellent security and good lifestyle and climate. He said the UK remains quite high on the target list, especially with its non-domiciled scheme. Australia and New Zealand remain of great appeal. Singapore is a high end but also high-cost destination. The Caribbean countries offer lower cost access and good visas for global travel. Malta and Cyprus continue to be in robust demand. "There are roughly 50 investment migration options now with good and transparent programmes that are available, each with different eligibility and costs, to choose from, and our expertise is matching those to the clients and then seeing them through the entire process successfully."

The discussion evolved to the need to obtain the right advice from the right experts and leverage their different types of skills and experience. Moreover, having the right conversations with the clients and encouraging as broad a multi-generational inclusion as possible was another highly beneficial approach.

The final word went to a guest who agreed that it all comes down to communication at the outset, to ensure the right solutions are built in the right places for the clients. He advised against simply doing what the client wants at the outset but opening the right level and depth of dialogue to really make sure the client knows what and why, and then the right decisions are made for today and for the future. ■

Expert Opinion

PAUL KNOX, Managing Director, JP Morgan Private Banking

"Global mobility often goes hand-in-hand with the development or adaptation of wealth structures for individuals and families, so what are the key trends today, and which countries or regions are Asia's private clients focusing on most actively? Well, in my experience, those moving jurisdiction very often neglect to take advice on the tax consequences on the structuring entities they have established. We usually tell clients wanting to relocate that ideally they need to start the planning 12 months in advance to ensure that all issues can be properly addressed. Private clients in Asia tend to focus on the UK, US, and Australia – with decision making driven more by lifestyle choices rather than tax reasons, for example children's education."

Expert Opinion

PAUL KNOX, Managing Director, JP Morgan Private Banking

"As to the qualities and characteristics of the private banks or IAMs or family offices that are today able to deliver such expert advice to clients with a multiple jurisdiction perspective, it is very clearly helpful to be part of an organisation which has global reach and local expertise. However, all advisors to wealthy individuals need to find access to an international network of advisors they can trust and can feel comfortable referring their clients to."