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Client briefing

Offshore Evolution - Transparency and Solutions in Cross Border Wealth Structuring

STEP Research Report, July 2009

In July this year, the Society of Trust and Estate Practitioners (STEP), in partnership with Spence Johnson, published Offshore Evolution: Transparency and Solutions in Cross Border Wealth Structuring looking at the ‘5 futures’ of the offshore wealth management industry - five different industry outlooks (from fair to stormy) depending on the services and location of respondents' businesses. A total of 32 trust and estate practitioners were interviewed between March and June 2009 about their predictions for the industry over the next 12 to 18 months.

This client briefing looks at the key predictions in the report and what it means for your business.

The report found that advisers and trustees who adapt and enhance their service offering may thrive in a new environment where wealthy families are looking to manage their international assets with greater care and due diligence.

While smaller client advisory/ fiduciary businesses might be relatively unaffected by the political, regulatory and AML changes currently impacting the private wealth market, it is the larger professional firms and private banks offering onshore/ offshore fiduciary, investment management and legal/ tax services who expect to see a significant impact on businesses (both positive and negative).

The report highlights the potential benefits of the changes in clients' service expectations and perspectives generally towards so-called 'white list' jurisdictions such as the Channel Islands. The suggestion is that service providers offering more transparent investment due diligence, greater independence, more tax sensitive and fully tax compliant services generally should fare well, as fewer negative regulatory changes are expected to impact these firms in fully compliant locations. Migration of clients from less transparent or less sophisticated service providers is anticipated.

Key predictions

- An end to banking secrecy
- Tax competition will increase
- Global tax advice is a significant driver of structures and for new business

The end of banking secrecy in some countries will force families to seek out advisers and trustees who can handle global tax advice, according to respondents. This will have a significant impact on private wealth markets globally.

Greater regulation forced through by the United States and G20 together with ongoing OECD initiatives, such as the widening of the scope and jurisdictional range of the EU Savings measures, and the increasing prevalence of Tax Information Exchange Agreements, will take their toll on banking and tax planning secrecy/non-declaration. The most significant impact is predicted in Switzerland with its expected adoption of effective 'all crimes' anti-money laundering rules. Earlier this year Singapore also announced its intention to adopt EU Savings measures - giving a clear signal of the jurisdiction's intention to play an active role in international taxation cooperation.

As genuine tax planning needs increase, greater competition will arise between service providers and between onshore and offshore jurisdictions themselves. The study noted that economic conditions will inevitably mean a hike in tax competition between countries and the distinction between offshore and onshore will "disappear". The report predicts that investors will need sophisticated tax and regulatory advice - integration / dovetailing between onshore and offshore to achieve the best outcome overall for the family.

Those firms equipped to provide cross border/ private wealth tax advisory services are likely to benefit over those firms focused relying solely on banking secrecy or which lack 'all crimes' money laundering rules.

The report predicts a transformation in client attitudes to wealth structuring:

- Clients get more involved
- Clients focus on reputation and risk
- Multi-family offices will grow
- Independent advice wins out

The study predicts that clients will increase their focus on structuring and wealth management as the younger generation in wealthy families look for a greater degree of control in relation to family wealth, aware of the need to 'tidy up' family wealth structuring in the light of increasing tax authority investigations and disappointing investment management performance / fund blow-ups.

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Rising number of family offices and 'multi-family offices' were seen by respondents as a side effect of the perceived underperformance of some financial portfolios over the last year. There was some disagreement between respondents, however, over whether multi-family offices truly lived up to their "independent" billing - some are perceived as being too commercial in nature (presumably, as opposed to following a more transparent 'cost plus' model).

Events in Switzerland were perceived as key drivers of change both there and elsewhere

- Evolution of Swiss private banking
- Increasing competition but pricing sanity is back
- Providers will offer solutions over products
- Return of the trusted adviser

Events shaping the Swiss private banking industry are predicted to result in a reduction of non-compliant wealth in Switzerland (historically thought to represent approximately one third of global 'offshore' wealth). This may create opportunities for wealth managers and fiduciary service providers in other jurisdictions who may benefit from outflows (referred to as the “transparency dividend”) albeit the general view was Switzerland will remain intact as a leading private wealth jurisdiction.

Challenging investment markets have opened the trust industry to charges of delivering "substandard performance on wrapped assets", say respondents. A healthy debate has ensued about whether the culprit is lack of independence, conflicts of interest or flawed manager selection processes. What is clear is that the one size fits all trust structure will come under threat. Trusts, foundations, insurance solutions and private fund structures will be used together or as part of a portfolio of holding vehicles to create optimum benefits for clients (from a control, flexibility and tax efficiency standpoint).

The report notes the deficiencies of standardised trust structuring - especially where trusts are established simply as financial ‘wrappers’. Respondents felt that trust and wealth structuring would trend towards more thoughtful/ tailored planning (not least in the current climate to stand up to challenges from onshore tax authorities) and were of the view that the pendulum had "swung too far towards 'productising' what is essentially a service". As a consequence of more tailored solutions and robust administration being offered, the costs of fiduciary services were predicted to trend higher.

Respondents felt that existing protections and risk management processes in place in both the trust and investment world may increasingly be regarded as insufficient going forward. New risk management processes may be required - evidenced by greater due diligence and more rigorous policies and procedures. There may be an increasing role for generalist 'trusted advisor' - the 'homme d'affaires' or 'femme d'affaires' private wealth adviser or trustee committed to establishing and deepening long term relationships with clients and their families.

What does this mean for your business?

The report provides valuable, independent, confirmation of the significant changes taking place within the wealth management industry. The secrecy/ non-disclosure planning model which exists within certain jurisdictions will give way to greater tax information exchange, transparency and tailored/ tax sensitive structuring.

Clients are leaning towards 'independent' fiduciary providers and ‘open architecture’ wealth managers. They are seeking higher levels of process, due diligence, tailoring and an enhanced range of advisory/ tax sensitive services.

The current environment appears to offer opportunities for businesses looking to cater for clients committed to OECD compliant structuring rather than ‘secrecy' based wealth models (described in the STEP report as "the transparency dividend"). Significant opportunities also exist for businesses catering to new wealth being generated in emerging and developing markets.

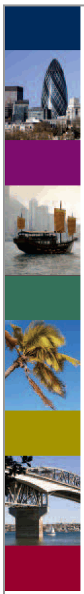
As a leading provider of integrated offshore legal, fiduciary and administration services, Ogier’s Private Wealth team believes the firm is well positioned to cater to the needs of sophisticated clients in these challenging times. Ogier offers independence, rigorous attention to detail, personalised structuring services and accessibility across all major time zones.

Source: Offshore Evolution - Transparency and Solutions in Cross Border Wealth Structuring. STEP Research Report, July 2009.

About Ogier

Ogier is an award winning world leader in the provision of offshore legal and fiduciary services. Our integrated legal and fiduciary approach has proved a winning combination which enables us to secure awards for the quality of our services and our people.

The Group employs over 850 people and provides advice on all aspects of BVI, Cayman, Guernsey and Jersey law and fiduciary services through our international spread of offices that cover all time zones and key financial markets. Our network includes Bahrain, BVI, Cayman, Guernsey, Hong Kong, Ireland, Jersey, London, Shanghai and Tokyo.



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