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WHITE PAPER

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FAMILY OFFICE, A MUST HAVE OR A MIXED BAG?

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"Family office" is a broad term used to describe a multitude of formal and informal structures that focus on the management and organization of a wealthy family's activities and investments. Generally, the family office is structured as an entity that provides, oversees, and coordinates fiduciary, investment management, estate planning, risk management, and administrative services to the family. Throughout this paper general considerations to keep in mind when structuring a family office will be addressed.

I. Where to set it up.

When determining where to set up the family office some of the key considerations that need to be kept in mind are:

- Privacy
- Financial regulation and other regulatory requirements
- Tax implications
- Domestic legislation on liability, fiduciary duties, trusts, and privileges
- Cost
- Impact of the jurisdiction on ability of the family office to attract talent
- Location of decision-making family members and key family assets

Usually, families set up their family offices in their home jurisdiction for ease of access and management.

If setting up in the United States, it is important to consider, besides federal tax and financial law, common and statutory state law concerning liability, fiduciary duties, privileges, and income and transfer taxes.

Outside of the US, regulatory oversight and VAT are likely to be important factors.

II. How to staff it.

A family office, regardless of its structure, needs multiple personnel to perform its functions. These functions range from strategic services like investment management and financial planning to administrative services such as accounting, tax planning, bill paying, among other activities. Therefore, the staff needed for the family office includes, among other professionals, executives (directors, officers, etc.), financial advisors, lawyers, and accountants.

The size of the family office's staff depends on the number of functions assigned to it. A small family office usually has approximately 6 professionals in their staff, a medium one 15, a large one 24, and a very large office around 48.[1]

Not all the functions need to be performed by the family office's personnel, some of them can be outsourced to third parties while overseen and coordinated by the family office. When determining whether to hire staff or outsource functions, it is important to consider the following factors, [2] which usually favor outsourcing over direct hiring:

1. Diseconomies of scale (where cost rises alongside volume)

2. Specialized skills needed

3. Quality low-cost alternatives to hiring staff

4. New technology solutions

When starting the family office, it is advisable to begin with a low number of staff, electing trusted professionals that have already work with the family. The early hires set the tone for the rest of the team.[3]

Compensation of the family office's staff is a key consideration. The compensation scheme can be broadly divided between two categories: alignment of interests or salary-based compensation. The alignment of interests consists of motivating employees by implementing payments that are correlated to financial results, such as carried interest and co-investment opportunities. Salary-based compensation involves competitive base salary plus discretionary bonus tied to results.[4]

The alignment of interests approach to compensation may be effective in attracting top-talent and offer potential income tax advantages (e.g., carried interest for key employees allowing favorable capital gains rates when applicable), however the compensation will be volatile

[1] Campbell, S. (2021). A guide to establishing a family office. Citi Private Capital Group.
[2] Id.
[3] Id.
[4] Id.

which could create dissatisfaction with the family or the staff, depending on how the market behaves. The salary-based compensation on the other hand could make it difficult to hire exceptional talent but will be relatively consistent regardless of the financial results of the family office.[5]

III. What its purpose and role is.

Family offices tend to be broken down into two (2) major categories: (1) single family offices ("SFOs"); and (2) multi-family offices ("MFOs"). For purposes of this paper, only SFOs will be addressed. The SFO generally spawns from a particular family and its business and often times evolves "accidently on purpose". Family members may all be operating in the same particular business and managing its properties, business interests and the like. They may start off with employees tending to the business which then extends to handling other matters including family's investments, insurance, and tax compliance issues. According to some estimates, there are approximately 3,000 family offices in the United States[6] and approximately 4,000 worldwide.[7]

The purpose of the family office is to consolidate and coordinate a group of professionals to manage the following main areas: investment and financial management, estate planning, tax accounting, philanthropy and compliance, all while being sensitive to the family's unique situation.[8] The main purpose of a family office is the dedication of those working with the SFO to serve the objectives of the family in an unconflicted way. Some family offices offer a variety of services while others concentrate on a few. Some of the services include investment management, bill paying, cash flow management and accounting for investment and personal assets, tax projections and advice with tax return preparation, asset management, estate planning, organization and facilitation of family meetings, insurance placement and management, as well as personal services, also known as concierge services, as required by the family.[9] A balance is needed between the requirements of the family for these various services versus the cost of the family office and how resources are allocated to these aspects. The challenge of helping a family manage both personal assets and investment or professional assets should not be underestimated.

IV. What challenges it faces in dealing with the family and outsiders.

A. Dealing with outsiders

In dealing with outsiders, the family office should be ready with policies and procedures to face the current global risk environment. Family offices are exposed to cyber risk, fraud risk, and organizational and operational risk.[10] There is also reputational risk when it comes to the family name being linked to e.g., offshore leaks, PEPs and / or sanctioned individuals.

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[5] Id.
[6] Shapiro 2002 and Avery 2004.
[7] Barbara Hauser 2001.
[8] Patricia M. Soldano 2009.
[9] Id.
[10] Deloitte Private. The Family Office Handbook, Achieving ambition, Managing risk, Leaving a rich legacy.

In recent years the increase in remote working has exposed family offices to greater cybersecurity risks. Remote work has increased exfiltration of data to employee's personal devices, increased security exposure due to larger number of remote workers, brought forth risks associated with connecting to unsecure networks in public locations, and increased risk of identity theft. The following tips could be helpful in curtailing these increased cybersecurity risks:

1. Work with a trusted security service provider to manage the network and try to avoid compromises

2. Prepare for phishing attacks

3. Deploy security patches for infrastructure and software and ensure reliable backup system

4. Ensure IT and Security staff resiliency through cross-training, collaboration, and appointing backup information security team leaders

5. Pay attention to incident responses and business continuity/disaster recovery plans

6. Assess whether a cloud-based system offers better protection

7. Have a robust system (4 or even 6 eye verification) for payment authorizations

In addition, specific steps can be taken to protect information about the family, family structures and family investments from third parties. In his article entitled Safeguarding Client Privacy (PRIVATE WEALTH MAGAZINE, May 2010), Jim Campbell sets forth the following suggestions for SFOs that seek to maintain privacy and confidentiality:

1. *External Service Providers* – a typical family office might work with a dozen or more external service providers, including banks, brokers, investment firms, CPAs, law firms, and technology companies. To what extent are these external service providers protecting a client's privacy and confidentiality?

   a. Privacy Statement – under the Gramm-Leach-Bliley Act of 1999, financial institutions are required to provide clients with a copy of the institution's privacy policy concerning the disclosure of non-public, private information.

   b. Staff Training – determine what programs are in place to teach staff the importance of client privacy.

   c. Email Encryption – confirm that external service providers are protecting electronic information and that sensitive information is sent and received in a secure manner.

   d. Due Diligence of Vendors - find out how the external service provider ensures that its vendors operate in a secure manner.

e. Industry Certifications - determine whether the external service provider maintains any industry certifications that demonstrate they are operating in a secure manner.

f. References - talk to other SFOs who have used the service provider and check the service provider's industry rankings.

g. Outsourcing - find out what tasks the service provider outsources and to whom the work is outsourced.

2. *Internal Technology* – items such as computer hardware, software, the internet and portable devices require extensive security measures.

   a. Laptop and Portable Device Security - these should be password protected and security procedures should be in place in the event the device is lost or stolen.

   b. Email Encryption - SFO emails, especially those including sensitive information (*e.g.*, passwords, account and identification numbers) should be encrypted.

   c. Internet Access Policy - internet access should only be through an approved firewall or internet service provider. Software downloads should be limited to those for business-related needs and from trusted business sources.

   d. Data Access and User Rights – all internal and external access to the SFO's business applications and communications should be controlled by the SFO or its hosting service provider. Users should have access only to the systems and data that are necessary to perform their duties.

   e. Attacks on Information Technology Systems - system logs should be generated and reviewed daily to identify and assess security system breaches.

   f. Data Backup - backup data should be treated with the same care and protection as the original information.

3. *The Workplace* – protecting privacy in the workplace begins with people.

   a. General Office Security - office security, including staff, vendor and visitor access, should be regularly evaluated.

   b. Work Area Policy - policies should be in place regarding: (i) discarding sensitive material; (ii) clutter around print stations; (iii) where employees keep passwords; (iv) where and how physical files are kept; (v) restricted access to electronic files; and (vi) shredding.

   c. Staff Training - new employees should be trained regarding safeguarding sensitive information.

   Additional internal controls might include strict authorization procedures for sensitive disclosures (e.g., dual signatures for certain transactions); frequently checking and reconciling data and following up on any exceptions; and conducting periodic risk assessments to determine policy weaknesses as the family office evolves.

Family privacy can also be maintained by holding assets through family partnerships, limited liability companies and trusts, all of which can have names unrelated to the family. In this way, the identity of the family can be safeguarded to some extent. However, the increasing number of beneficial ownership registers worldwide makes this safeguarding more and more challenging. This is particularly the case as different jurisdictions interpret the required approach in different ways and provide different levels of access to information which can be particularly sensitive.

With respect to protecting sensitive family information from tax and regulatory authorities, today's regulatory climate requires fairly extensive disclosure to government and regulatory bodies. Generally, for foreign assets, a taxpayer must report such assets on Schedule B of his or her income tax return, file Form FinCEN 114 (Report of Foreign Bank and Financial Account or "FBAR"), and if the value exceeds the applicable thresholds, file Form 8938 (Statement of Specified Foreign Financial Assets).

4. *Disclosure Stoplight System* – consider putting a stoplight system into place to indicate to employees the sensitivity of the material.

   a. Green – indicates non-sensitive information that can be disclosed as appropriate.

   b. Amber – indicates potentially sensitive material that should only be disclosed if necessary.

   c. Red – indicates highly sensitive material that may only be disclosed with the express consent of the family office.

5. *Tax Preparation and Disclosure*

   a. Attorney-Client Privilege – the privilege is not absolute, and attorneys may be allowed or required to reveal confidential information in certain cases (e.g., to prevent furtherance of a crime). Moreover, once the client has disclosed the information to a third party, the privilege has been waived.

   b. Circular 230 – all tax return prepares must register with the IRS and abide by the standards of conduct as set forth in Treasury Department Circular 230. Under Circular 230, tax return preparers must, among other rules, make certain disclosures in order to render a covered tax opinion. Family offices should be aware of the disclosures that will be made.

B. Dealing with the family

Conflict between family members may arise from differences regarding investment management, profit distribution, general management, or potential exits of family members. Each family will have a different way of dealing with this.

From the perspective of the family office it may be comfortable to have a well-established corporate governance framework to deal with any conflict between family members that may arise. Corporate governance may help balance the interests of the diverse family members to effectively avoid and dissuade conflict.

However, the family may not want to subject itself to rigid corporate governance inspired rules and may prefer to emphasize communication between members and with the office. This will require that the family officers have a high EQ ... There are many ways corporate governance can be structured in the family office, but usually it is a question of choosing between family members and outsiders, to be in charge of the governing body, and determining how many of each should conform it. The governing body could take the following forms: [11]

1. Principal directed: One or two family members in charge of all major decisions.

2. Family board: Multiple family members are elected to represent the entire family.

3. Family council: Various members of different generations and branches of the family conform the family council which will often be advisory in nature.

4. Outside directors: If the governing body includes outside directors, normally the board will be a combination of selected family members and outsiders.

It is also advisable to consider the following factors related to interfamily relations when structuring the family office: [12]

1. *Organize clear voices*. Family beneficiaries should be organized into subsets that can be represented by a single spokesperson, especially where the family subset will share distributions. As the family grows, the spokespersons will ensure fair and equitable distribution. Consider electing a board that serves as a gatekeeper, referring business issues to management and requesting that management present solutions to the boar.

2. *Avoid marital dissonance*. Any individuals that marry into the family should sign prenuptial agreements and should waive rights to any claim on assets / be expressly excluded from any family trusts. Moreover, such individuals should not be permitted to vote or speak for the family.

When designing a corporate governance framework for a family office, the advisor should keep in mind the following considerations: (i) family dynamics trump business dynamics; and (ii) clear rules and procedures help mitigate conflict.

Besides conflict between family members, older family offices that are facing generational change may encounter increasingly large and diverse generations, whose priorities and goals

[11] Campbell, S. (2021). A guide to establishing a family office. Citi Private Capital Group.
[12] See CI Investments Management Co., Chief Considerations for Designing a Family Office Organization (available at http://www.ciinvestments.org/family.htm).

may differ from the original outlook of the older generations. In addition, the way the younger generations like to operate the family office will most likely be different to the current operating scheme. The family office will have to adapt to this new changes and requests by the younger generation, while at the same time continue providing a united vehicle to manage the families' wealth.[13]

V. Privilege issues.

Privilege issues are unique to every jurisdiction. It is important to analyze domestic law to see what type of privileges exist, what is their legal framework, and what are the requirements for the privilege to subsist. Based on that analysis the family office can implement policies and procedures to ensure that those privileges protect confidential information being shared through or by the family office.

In the United States, the privileges are determined by the respective state's law, federal law, and even constitutional law. The relevant privileges for family offices from a U.S. perspective, along with the general requirements and key considerations for family offices, are listed below:

1. Attorney-client privilege

   Communication must be: (i) confidential; (ii) between client and legal advisor; and (iii) for purpose of giving or receiving legal advice.

   Key considerations for family offices: (i) waiver; (ii) extension to agent of attorney (*Kovel)* or agent of client; (iii) extension to others with common interests and their attorneys and agents; (iv) differentiating legal advice from other advice; and (v) application to fiduciaries.

2. Tax practitioner privilege

   Communication must be: (i) between a taxpayer and a federally authorized tax practitioner; (ii) privileged if it were between a taxpayer and an attorney; (iii) related to tax advice other than tax shelter advice; and (iv) sought in a non-criminal federal tax proceeding. I.R.C. §7525.

   Key consideration for family offices: (i) limited to practitioners authorized to practice before IRS; (ii) limited to U.S. federal civil tax proceedings; and (iii) state accountant-client privileges differ and do not apply in federal proceedings.

3. Attorney work product doctrine

   Materials must be: (i) prepared by or at the direction of an attorney; and (ii) in anticipation of litigation or for use in current litigation.

[13] Smart People Superb Technology. (2018). Five operational challenges facing the modern family office.

Key considerations for family offices: (i) anticipation of litigation must be objectively reasonable; (ii) triggers obligation to preserve evidence; and (iii) stronger protection for opinion work product.

4. Privilege against self-incrimination

   The anticipated communication must be: (i) testimonial, incriminating, and compelled.

   Key considerations for family office: (i) act of producing documents may be testimonial in certain circumstances; (ii) only applicable to individuals not collective entities; and (iii) invocation is complex judgment call with potential negative consequences.

5. Spousal communications privilege

   The communication must be: (i) confidential and made during marriage.

   Key considerations for family office: (i) either spouse may invoke privilege (even after divorce); (ii) must be expectation of confidentiality; and (iii) destroyed by presence of anyone outside marriage.

6. Spousal testimonial privilege

   For the privilege to apply: (i) the proceeding must be criminal; (ii) the non-defendant spouse must invoke; and (iii) the marriage must exist at the time testimony is sought (numerous states have repealed this privilege).

   Key considerations for family office: (i) do not confuse testimonial privilege and communications privilege.

7. Physician-patient privilege

   For the privilege to apply, there must be: (i) a confidential physician-patient relationship, during which the physician acquired information that is necessary for medical diagnosis or treatment.

   Key considerations for family office: (i) intersection with HIPPA; (ii) scope of consent/waiver; and (iii) common exception when mental capacity/validity of will is disputed.

8. Cross-border privilege issues

   When sensible information has been shared with one or more parties abroad, privilege issues should be analyzed not only from a U.S. perspective but also under the laws of each relevant country. Relevant factors to be taking into account are: location of attorney, client, pending case, and relevant documents, where is the attorney licensed, and whether the attorney is in-house or outside counsel.

> Key considerations for family offices: (i) know law of relevant jurisdictions; (ii) border searches of devices; and (iii) consider that disclosure in one jurisdiction, voluntary or involuntary, may waive privilege in others.

To mitigate risks in the family offices it is important to incorporate best practices, such as (this apply specially in the United States, but are not exclusive thereto):

1. Educate
    - Describe benefits and scope to privilege-holders and their advisors
    - Explain waiver with examples
2. Establish good habits
    - Clarify identity of client
    - Limit participants in calls and meetings
    - Identify privileged documents with headers or subject lines
    - Segregate legal advice into communications separate from business
    - Advice or return preparation
    - Do not forward privileged communication outside circle of privilege
3. Maintain documents appropriately
    - Consistent with expectation of confidentiality
    - Segregate return preparation work papers from privileged advice
4. Understand limitations of *Kovel*
    - Applies to professional assisting attorney in rendering legal advice, engaged and directed by attorney
    - Does not protect accountants for preparation of returns intended for filing
    - Protection for appraisers depends on intended use of the information
5. Keep wide audience in mind when future waiver may be advantageous, for example:
    - Reliance on advice of counsel
    - Reasonable cause and good faith defense to penalties

- I.R.C. §2036 and §2038, exception for bona fide sale for full and adequate consideration

- I.R.C. §2703 exception for bona fide business arrangement, not a device to transfer property to members of decedent's family for less than full or adequate consideration, terms comparable to arm's-length transaction

- Other situations where attorney's records may be best evidence of intent

6. Produce documents only after due consideration of privilege issues and careful review

   - Consider scope of impact of potential subject matter waiver

   - Weigh pros and cons of positions that trigger waiver

   - Review descriptions in bills and invoices

   - Consider all relevant privileges, not just attorney-client

   - Remember that client controls attorney-client privilege, but attorney controls attorney work product

VI. Costs.

Generally, the annual operating cost of the family offices tends to be approximately 1% of assets under management, however the amount can vary depending on several factors including complexity of the family office operation, scope of services offered, and other external costs.[14]

Data drawn in 2019 and 2020 in surveys performed by Citi Private Bank shows the following average cost models for family offices:

FAMILY OFFICE	FULL-TIME PROFESSIONAL STAFF	FULL-TIME SUPPORT STAFF	LOW-END ANNUAL COST	HIGH-END ANNUAL COST
Small	2	4	$1.5 million	$1.8 million
Medium	4	11	$3 million	$3.8 million
Large	8	16	$8 million	$10 million
Very large	16	32	$14 million	$22 million

VII. Regulatory consequences of what it does and where it sits.

[14] Campbell, S. (2021). A guide to establishing a family office. Citi Private Capital Group.

The regulatory consequences applicable to family offices are usually related to the investment management part of the services rendered, as well to reporting of beneficial ownership. It is important to analyze the domestic law of the jurisdiction in which the family office sits to determine the scope and reach of the applicable regulations and to establish policies and procedures to ensure proper compliance.

In the United States, family offices need to be aware of the following regulatory consequences (non-exhaustive list):

1. *Registration with the Securities and Exchange Commission ("SEC")*

   Any person who, for compensation, engages in the business of providing investment advice is required to register with the SEC (with some exemptions). Under C.F.R. §275.202(a)(11)(G)-1 family offices are exempted from registration, even though they manage investments for the family, provided certain requirements are met. Mainly the requirements consist of the clients being limited to "family clients", the family office being wholly owned by family clients and controlled by "family members" and/or "family entities", and the family office not holding itself out to the public as an investment advisor.

2. *Corporate Transparency Act ("CTA")*

   On January 1, 2021, the CTA was enacted. The CTA requires domestic entities (corporations, limited liability companies, and similar entities which are created by filing a document with a secretary of state or other similar office) and foreign entities (corporations, limited liability companies, or other similar entity that is formed under foreign law and is registered to do business in the United States by the filing of a document with a secretary of state or equivalent office) to report the identity of and certain information about their "*beneficial owners*" and their "*applicants*" to the Financial Crimes Enforcement Network ("FinCEN"). The reporting obligations will become effective on January 1, 2024, and should, by and large, apply to family offices in the United States.

   For purposes of the CTA the "*beneficial owner*" is any individual who directly or indirectly, through any arrangement, exercises substantial control over the entity, who owns or controls at least 25% of the ownership interests in the company, or who receives substantial economic benefits from the assets of the entity. The "*applicant*" is any individual who files an application to form the entity under the laws of a State or Indian Tribe.

   The information that needs to be reported as to the beneficial owners and applicants is mainly: legal name, date of birth, residential address, and unique identifying number.

   Violations to these obligations result in: (i) a civil penalty of not more than $500 USD for each day that the violation continues, and: (ii) a fine of not more than $10,000 USD, imprisonment for not more than two years, or both.

3. *Foreign Entities Subject to the Foreign Account Tax Compliance Act ("FATCA")*

Cross-border family offices may be subject to FATCA obligations from a U.S. perspective, either as withholding agents, foreign financial institutions ("FFIs"), or non-financial foreign entities ("NFFEs"). FATCA was enacted to prevent offshore tax abuses by U.S. persons. It consists of a withholding regime designed to achieve this intent by imposing a 30% withholding tax on certain foreign entities (FFIs or NFFEs) that refuse to disclose the identities of their U.S. account holders, in the case of FFIs, or substantial U.S. owners, in the case of NFFEs, and to report them to the Internal Revenue Service ('IRS").

The 30% withholding tax is imposed on "withholdable payments" to FFIs and certain NFFE. Withholdable payments consists of fixed or determinable annual or periodic ("FDAP") payments from sources within the United States, which include, among other types of income, passive income like interest, dividends, and original issue discount.

To avoid the 30% withholding tax FFIs and NFFEs must comply with the requirements and obligations established in the FATCA provisions found in Chapter 4 of the I.R.C. Generally, for FFIs this entails entering into an agreement with the IRS.

4. *FinCEN Form 114, Report of Foreign Bank and Financial Accounts ("FBAR")*

The FBAR is used by the U.S. government to identify persons who may be using foreign financial accounts to circumvent U.S. law. A U.S. person must file an FBAR if they have financial interest in or signature or other authority over any financial account(s) outside the United States and the arrogate amount(s) in the account(s) exceeds $10,000 USD at any time during the calendar year.

5. *Some IRS forms cross-border family offices may need to file (non-exhaustive list)*

a. Form 3520 (Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts)

b. Form 3520-A (Annual Information Return of Foreign Trust With a U.S. Owner)

c. Form 8938 (Statement of Specified Foreign Financial Assets)

d. Form 5471 (Information Return of U.S. Persons With Respect to Certain Foreign Corporations)

e. Form 5472 (Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business)

f. Form 926 (Return by a U.S. Transferor of Property to a Foreign Corporation)

g. Form 8865 (Return of U.S. Persons With Respect to Certain Foreign Partnerships)

h. Form 8621 (Information Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund)

VIII. How to pay for it.

Family offices typically are compensated either through a fee-based structure or an equity-based structure.

1. *Fee-based structure*

   The family office earns fees from family members/trusts/entities in exchange for performing functions and/or providing investment management advice.

   There are different type of fee-based structures, such as:

   - Hourly fee (e.g., special projects, concierge services)

   - Fixed fee (tax preparation, cash management)

   - Percentage of assets under management or "AUM" (investment management)

     In a fee structure, you need to consider which investments / entities are going to pay the fees and how forensically this needs to be calculated (time sheets, third-party valuations of assets etc.)

2. *Equity-based structure*

   The family office may also earn a performance-based return ("profits interest") based on the performance of the family's investment entities. The family office will be obligated to pay management costs regardless of performance of family's investment entities.

In deciding whether a fee-based or equity-based structure is the right choice, income tax and VAT implications must be taken into consideration.

Currently in the United States a fee-based structure would typically result in the payments not being deductible for the family members/trusts/entities. This type of expenses are usually categorized as I.R.C. §212 deductions, which the Tax Cuts and Jobs Act suspended until the end of 2025. Therefore, an equity-based structure may offer a more advantageous position for the family from a tax perspective.

If the family office is compensated through an equity-based structure by being assigned a profits interest in the family investment entity (either an LLC or LP), the profits received by the family office should retain their original character which could lead to preferential capital gains rates. The grant of the profits interest should not be a taxable event, provided that it meets the safe harbor established in Rev. Proc. 93-27 and the requirements set forth in Rev. Proc. 2001-43. At the same time, even though the family investment entity would not receive a deduction for the grant of the profits interest, or any subsequent distribution related thereto, the diversion of income from the partnership would result in the same economic effect that a deduction would have originated.

The stream of income that the family office would receive on account of its profits interest can be offset by trade or business deductions under I.R.C. §162, provided that the family office rises to the level of a trade or business. Back in 2017, the Tax Court's decision in *Lender Management, LLC* established a roadmap on how a family office may achieve a trade or business status. The main requirements that can be extracted from *Lender*, are that the family office engages in an actual business activity, conducted on a regular and arms-length basis consistent with a profit motive, and not primarily for the management of one's own capital. Determining whether Lender supports a conclusion of a family office being engaged in a trade or business requires an intensive fact and circumstances analysis, on a case-by-case basis.

IX. What is its role vis a vis the family and vis a vis the investments or assets of the family.

The services provided by a family office can be divided into wealth management services and family management services. The role of the family office in relation to the family's investments or assets amounts to the wealth management services, while its role in relation to the family itself corresponds to the family management services.

1. *Wealth management services*

   These include: investment strategy and management, tax and estate planning, philanthropy, and trusteeship and/or custodial services. Usually, these services are what drives the formation of the family office in the first place.

   Wealth management services usually become necessary when there is a liquidity event (e.g., the sale of a business or other significant asset), or when the assets grow to an extent where the complexity demands too much attention from the family.

2. *Family management services*

   These include: risk management, lifestyle management, record keeping, reporting and retention, and family continuity.

X. What is the role of the family office versus management of family businesses.

It is common for a family office to start as an "*embedded family office*" which consists of employees of the family's operating business providing services to the owning family on an *ad hoc* basis. As time goes on and the needs of the family grow larger and more complex an "*embedded family office*" usually evolves to a "*single family office*" which is a separate entity formed to provide services exclusively to a single family.

XI. What challenges does it face in dealing with the family: privilege issues, costs, conflicts among family members and other considerations?

- Understanding developing priorities of the family. Individuals may not express their priorities and objectives in as simple a manner as corporations ...

- Multiple generations with different opinions and interests – anybody who has children and specifically teenagers will know that they don't always agree with their parents or indeed share the same attitudes to wealth

- Splits in family interests – as generations progress, more family members become involved or interested in the wealth, and there will necessarily be individuals who do not wish to co-invest with their family

- Balancing the cost of running the office against meeting the needs of the family. As time goes on the family office can become fat ... just as the needs of the family become more complex and the wealth gets divided.

XII. What challenges do advisors face dealing with family offices: incomplete information, gatekeeping?

- Onboarding / KYC. Collecting information is increasingly seen by service providers as a matter of survival while families and family officers may take the opposite view (preservation of confidentiality is a matter of survival). There is common ground, but it requires good will and pragmatism on both sides

- Fast moving matters. A family office will typically not be given much lead time and / or will typically not give advisors much notice – urgent is normal!

- Priorities / goals moving during the course of a transaction

- Need to know. Information tends to be sensitive and may not be shared freely. There may not be alignment between what the advisor thinks they need to know and what the family office thinks the advisor needs to know ...

XIII. What challenges do family offices face dealing with advisors: lack of clarity, practical and actionable advice?

- Finding the right advisers and service providers who are able to step back and adopt commercial and pragmatic approaches. Bigger officers are staffed with former advisors who do not want long memos. The office's job is to solve problems and they need advisors who see themselves as problem solvers, not "givers of expert advice".

- Getting advisors to pitch advice at the right level taking into account who the client is. Again, if the family office is staffed with former partners of law firms, the advice they are seeking is different from that of clients without the same experience or training.

- Advisors getting an understanding of the bigger picture

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