

FOCUS ON LEGAL SOLUTIONS



As the private asset management industry faces rapid changes in the form of increasing client demand, tougher regulatory burdens and uncertainty in terms of tax laws, compliance, reputation and reviewing business strategies has never been higher on wealth managers' agendas. PAM sits down with three legal experts in the wealth management sector to discuss how this change is affecting the industry as a whole

PRIVATE ASSET MANAGEMENT (PAM): WHAT ARE SOME OF THE BIGGEST LEGAL AND REGULATORY CHALLENGES IN THE PRIVATE ASSET MANAGEMENT SECTOR TODAY?

THOMAS J. HANDLER (TJH): Wealth managers are increasingly distracted from their primary focus on investments by the actions of highly aggressive government agencies and related litigation, administrative proceedings and arbitration. As a result of investor abuses mishandled by government agencies and over-reaction by Congress to the economic meltdown, advisors have been saddled with daunting, overblown regulation, which would have been largely unnecessary had the SEC been doing its job all along. The almost unfettered discretion afforded these agencies is highly problematic given the inordinate amount of power and resources vested in them. Moreover, private citizens have great difficulty in holding government agents accountable, largely due to cost and litigation immunity. The related costs of compliance and defense are a significant drag on resources and professional talent, and serve as a major barrier to entry for new businesses and family offices.

DAVID SCOTT SLOAN (DSS): The biggest challenge facing the sector is uncertainty in tax laws, in regulatory emphasis and compliance, as well as uncertainty about the future. Clients, and the markets, abhor uncertainty. After the recent elections in the US, there is a palpable sense of increased regulation, considerably more administrative compliance and higher taxes.

RASHAD WAREH (RW): Taxes are number one – compliance, enforcement initiatives, new reporting obligations, and what seems to be an endless stream of legislative changes, both in the US and internationally. Not far behind is the challenge of change itself: appreciating how the family, its wealth and the surrounding regulatory and social environment will all continue to undergo a variety of changes, some difficult to identify but others more predictable. The pace and magnitude of change has clearly accelerated, and has raised renewed questions, all of which need to be addressed. How will the family continue to adapt to globalization, both in its asset base, its own family culture, and in the national economies in which the family lives and invests? How will the family either accommodate or promote the goals and roles of its emerging young adults and new family members? How will it manage the threats to confidentiality and personal security in the digital and physical world? How will it manage its own transitions against the backdrop of a world in transition?

PAM: IN WHAT WAYS ARE CHANGES IN TAX LAWS AND MARKET CONDITIONS PRESENTING CHALLENGES TO INDIVIDUALS AND PRIVATE COMPANIES WHEN IT COMES TO WEALTH MANAGEMENT?

TJH: The almost incessant political tinkering by Congress in tax laws has created an environment much more focused on short-term results and tax efficiency. Accordingly, private businesses and citizens face the increasingly more difficult task of planning for the long term in a thoughtful, comprehensive manner. This chills business growth, capital formation and long-term investment while sharply focusing efforts on short-term results. The related levels of uncertainty and lack



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private companies during such periods.

Concurrent with these increasing burdens and uncertainties, the market is much more volatile and there is little certainty that the future will follow historic trends, which creates yet more uncertainty.

Successful clients are those who are able to avoid freezing in the face of, and who are able to adapt to, this volatile and uncertain tax and investing climate, as well as engage in active planning to execute wealth transfers and succession planning.

PAM: WHAT ROLE DO LAW FIRMS PLAY IN WEALTH TRANSFERS, AND HOW DO STRATEGIES VARY ACCORDING TO DIFFERENT REGULATORY ENVIRONMENTS?

TJH: The role of law firms in designing, structuring and implementing thoughtful wealth transfers is one of the most valuable and important services a private client firm can provide. By carefully monitoring positions taken by the IRS and state and international revenue agencies, and understanding developing trends and issues, law firms can assist clients and their professional advisors in executing prudent, cost-effective, defensible strategies. In a highly fluid and uncertain environment, tax and estate strategies need to be more thoughtful and implemented with a higher degree of precision. Optionality is perhaps the most critical element in this environment; clients want to have fallback positions, some measure of control and the ability to access investments, if needed.

DSS: Through private client wealth preservation, lawyers are at the absolute crossroads of significant wealth transfer. We are involved at all stages of wealth planning, not just providing documentation to implement the agreed upon planning strategy. Private wealth lawyers are working with clients to design, develop and implement wealth planning strategies, the end product of which are documents that are tax efficient as well as reflect the goals, intent and philosophy of the clients. When planning for clients who are involved with public companies, in addition to the changing tax laws, it is critical that implementation of a strategy comports with SEC rules. As a result, the planning strategies take on a Rubik's-



IN A HIGHLY FLUID AND UNCERTAIN ENVIRONMENT, TAX AND ESTATE STRATEGIES NEED TO BE MORE THOUGHTFUL

THOMAS J. HANDLER



of confidence in our government and the economy have caused: massive flight of capital, businesses and private citizens out of high-tax states and countries; unwillingness on the part of US and global businesses to bring capital back into the US; and the increasingly frustrating search for alpha.

DSS: The impending fiscal cliff, and the resultant ongoing budget negotiations to address it, pose considerable challenges to individuals and private companies and their advisors.

Regarding transfer taxes, we have been extremely busy assisting clients to avail themselves of the \$5.12m per person gift tax exemption, resulting in an incredible level of activity in current gift-tax planning. The notion that the gift tax exemption will be reduced to \$1m – either by Congressional action or inaction – has spurred many clients to act now, while the laws are understood. As wealth planners, we have been required to pay even closer attention than usual to the rumblings out

of Washington and advise clients based on the best information available about future legislation.

Clients and their advisors are keenly focused on the potential changing tax landscape, and appear to be making investment decisions that are as much tax driven as they are market inspired. For example, post election, the market was off almost 6%; many experts attribute this to either concerns over the fiscal cliff and/or that investors are trimming highly appreciated holdings at the current capital gains rate.

RW: Changes to our tax (and reporting) laws have greatly increased reporting burdens applicable to individuals and, to some extent, private companies. In addition, our wealth transfer tax system has been extremely fluid in the past few years – with its existence at times in question, and with the exemptions and tax rates continuing to be in flux. Contrary to a typical client's instincts, it is often best to make wealth transfers and restructure

cube-like approach, ensuring that all sides of the strategy line up to comply with tax and securities laws while also satisfying the client's goals.

RW: We help clients manage complexity and risk when they transfer assets for the benefit of the family and philanthropic goals; we help them understand their choices, the future range of potential results, and the means and methods needed to implement their decisions. Further, we create and help maintain the structures of their choosing in collaboration with their other advisors and service providers. By focusing on the core issues of recurring importance to our clients, we are able to provide integrated advice across traditional legal boundaries (involving multiple legal subjects such as the tax, regulatory and trust rules that apply to a trust investment, for example). The challenge is to provide this through a team of advisors of a manageable size and at an appropriate cost.

PAM: IN WHAT FIELDS OF WEALTH MANAGEMENT DO YOU WORK IN AND WHY ARE THEY IMPORTANT?

TJH: Handler Thayer, LLP is considered an advanced planning firm serving the needs of a global client base of affluent families, privately-held businesses and family offices. Consequently, our role in wealth management often involves tax management, estate planning, asset protection, pre-marital planning and business planning. Over the years, we have developed structures, planning protocols and strategies designed to be best-in-class approaches to help clients limit risk and protect and grow their investments, non-financial assets and businesses over the long term. In a dynamic and complex financial environment, it has become increasingly important for wealth managers to collaborate and work with counsel and other members of the professional advisory team.

DSS: As a tax lawyer, and having focused on wealth transfer planning for my entire career, I manage the private client practice at Holland & Knight LLP.

As most other large law firms eliminated trusts and estates practices because their models were unprofitable, a significant void was left when closely held business clients' multi-generational wealth pres-

ervation, planning and protection needs were abandoned.

Holland & Knight, which has a long history of expertise in wealth and business succession planning, seized upon this opportunity to further strengthen its position as the largest and most sophisticated estate planning group of any law firm in the US. Our attorneys have designed and implemented countless comprehensive plans for wealthy individuals, multigenerational families and international clients using a broad range of sophisticated strategies and techniques.

RW: We advise exceptionally successful families and entrepreneurs (their trusts, trust companies, family offices and investment vehicles) as well as the financial institutions, wealth management firms, and charitable organizations that serve them. Our firm focuses on the core legal issues of recurring importance to our select clientele, such as: private and commercial trust company design and regulation, income and transfer tax planning and controversies; international structures for multinational families, business succession, trust and family governance, family office securities law, charitable and other nonprofit organizations, litigation management and dispute resolution, and significant transactions involving strategic investments or family businesses. In this way, we help clients manage complexity and risk and make decisions across transitions in order to maintain and build on their success.

PAM: HOW DO YOU SEE THE INDUSTRY DEVELOPING IN THE NEXT 12 MONTHS IN TERMS OF REGULATORY AND TAX CHANGES, AND WHAT DO INDIVIDUALS AND PRIVATE WEALTH MANAGERS NEED TO LOOK OUT FOR?

TJH: The 2013 outlook for wealth managers includes dynamic change, intertwined political and economic issues and increased taxation. Whether or not Congress



kicks the can down the road next year, the inevitable directional trend is that taxes of every type and nature are highly likely to increase over the long term. The continued growth of federal and state government and concomitant insatiable appetite for tax revenue will further drive businesses and investors out of high-tax jurisdictions and toward tax-advantaged investments. Continued aggressiveness and overregulation by government agencies will certainly militate toward increased costs as class warfare continues to escalate and the "top 2%" find themselves shouldering an unprecedented share of the tax burden. This will drive tax awareness and tax-motivated business and investment decisions.

DSS: As we await a puff of white smoke from Capitol Hill to learn what the tax rules will be in 2013, the emphasis needs to be on studying and understanding the new tax laws and then developing appropriate strategies to adapt to opportunities created by such laws. Much time will be spent counselling clients as to the impact of the new laws on their existing, non-taxable estate structures and determining appropriate, or necessary, refinements to such plans.

RW: The industry will increasingly need to reorient to changes in the demand side by understanding what clients are asking for in a changing world rather than relying on what has been supplied to them in the past. The demand side is asking for a stronger cost-benefit ratio. ■