McDermott Will & Emery

FAMILY OFFICE SYMPOSIUM 2024

BUILDING LEGACIES THROUGH INNOVATION

At our **Family Office Symposium 2024**, we gathered more than 275 family office executives to explore creative solutions to navigate complexity and gain fresh perspectives on the challenges they face. Over two days, participants heard from family office leaders and McDermott partners on the latest developments impacting family offices and exchanged insights on strategies to manage wealth and legacy in a dynamic environment.

This report provides key takeaways from each session, including highlights from live polling conducted during the event to provide additional context and insights.

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HERE IS WHAT WE DO KNOW: POTENTIAL FEDERAL TAX POLICY DEVELOPMENTS

Panelists discussed hot button tax issues leading up to this year's elections and the potential impact of those elections on federal tax policy and legislation. The panelists provided insight into each political party's potential legislative agenda and the sunsetting of certain tax provisions contained in the 2017 Tax Cuts and Jobs Act (TCJA).

TOP TAKEAWAYS INCLUDED:

- Unless Congress acts before the end of 2025, many key provisions of the TCJA will expire – including the lower individual and fiduciary income tax rates, the increased standard deduction, the disallowance of miscellaneous itemized deductions, the $10,000 state and local tax deduction limitation, the deduction for up to 20% of qualified business income, and the increased estate and gift tax applicable credit amount.
- While the Republican proposals are less defined at present, President Joe Biden and the Democrats have presented a list of tax proposals, including eliminating many of the benefits of grantor trusts, managing the size of retirement accounts by requiring mandatory distributions, and eliminating the effectiveness of private placement life insurance (PPLI) from an income tax planning perspective. While the Democratic proposals are not likely to be enacted in the near term, they are indicative of the party's priorities.
- Global initiatives put forth by the Organisation for Economic Co-operation and Development (OECD) such as Pillar Two (coordinating minimum tax on the largest multinational corporations) are taking effect and could lead to an international coordinated approach to the taxation of ultra-high net worth individuals.

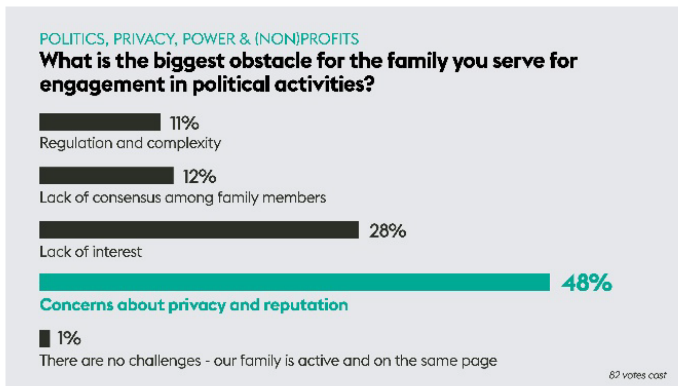
POLITICS, PRIVACY, POWER & (NON)PROFITS

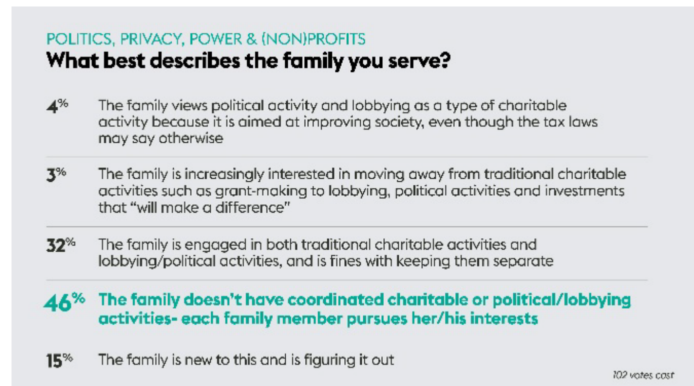
This session explored the intersection of political and charitable agendas. Panelists discussed the complex regulatory environment, privacy concerns, pros and cons of various nonprofit vehicles in relation to political activity, and the practical, legal and tax aspects to be considered.

TOP TAKEAWAYS INCLUDED:

- There are many complex rules governing political giving and lobbying activities. State and local lobbying and campaign contribution laws vary and differ greatly from federal law. It is important to understand the federal and local rules that will apply to your family's political contributions and lobbying activities.
- Consider using multiple avenues for giving, both for privacy reasons and to help streamline activities. For example, consider using a donor-advised fund for donations to organizations that may be off-message for your private foundation.

- Foundations often shy away from grants requiring expenditure responsibility, but in most cases it is not too cumbersome, and it is often a good idea, even for grants that do not require it.





STRESS TESTING YOUR FLP: THE ANATOMY OF AN FLP CHALLENGE

Panelists discussed planning with, and vulnerabilities of, family limited partnerships (FLPs), with a focus on protecting against arguments by the Internal Revenue Service (IRS) that a donor's retained control or enjoyment over the FLP will bring the value of FLP assets into the donor's gross estate at death.

TOP TAKEAWAYS INCLUDED:

- In recent years, the IRS has been more aggressive in arguing for estate tax inclusion of previously gifted FLP interests in the donor's gross estate at death, where the donor retained rights and powers over the FLP, alone or with others.
- The strongest defense against an IRS argument for including the gifted FLP interests in the donor's gross estate is to show that the FLP was created for significant non-tax business reasons. When creating an FLP, document and emphasize the non-tax reasons for its creation.
- If the significant non-tax business reason position is weak, or even if it is strong but further risk reduction is desired, consider taking steps to de-control the FLP, including the donor divesting his or her FLP interests and relinquishing managerial roles in the FLP during life.
- Operate the FLP in accordance with business formalities and in furtherance of the stated purposes for the FLP. Doing so avoids the appearance of the donor having retained the right to enjoyment of the property that has been contributed to the FLP.

THIS AIN'T OUR FIRST RODEO: HOW TO SUCCESSFULLY NAVIGATE A LARGE TRUST ADMINISTRATION

Panelists explained how to prepare for and efficiently administer a complex estate and revocable trust.

TOP TAKEAWAYS INCLUDED:

- Planning ahead is critical. Now is the time to consider stress testing the estate plan for significant items, including by confirming proper titling of assets; preparing an inventory of relevant financial items; confirming that the will, trusts and beneficiary designations reflect the current intent; determining values of business interests, collections and tangibles; confirming treatment of related-party debt; and assessing risk of litigation.
- As soon as the decedent dies, prepare a comprehensive agenda for the estate administration (which may last years). Major agenda items include retaining counsel, probating the will, projecting estate obligations and long- and short-term liquidity plans, marshalling assets, retaining appraisers, gathering the decedent's financial records, compiling all gift tax returns filed by the decedent during his or her lifetime, reviewing all trust agreements for operative provisions taking effect at death, and preparing the federal estate tax return.
- Fiduciaries handling the estate administration should ensure that there is real-time information flow to relevant parties as tasks are being completed. Relevant parties may include the estate counsel, estate accountant, family office, executors, beneficiaries and appraisers. The state's attorney general may also need to be kept informed if a charity is a beneficiary of the estate.
- The federal estate tax return and payment is due nine months from the date of death. An automatic six-month extension of time to file is available, but it will *not* automatically extend the time to pay. Determine any state estate tax filing and payment obligations; state rules likely differ from federal rules.

BRIDGING THE DIVIDE: SUCCESSFUL GENERATIONAL TRANSITIONS

Panelists discussed common themes for generational transition, various governance structures and the importance of family office executives' involvement in generational transitions.

TOP TAKEAWAYS INCLUDED:

- Family office executives should be the focal point of generational transition because they have the best vantage point and can communicate freely with all family members.
- To facilitate a successful generational transition, families should be encouraged to determine what constitutes success for their family.
- The starting point for a generational transition is determining whether the goal is to pass the baton down one generation or to define rules for continuous transition of the family business to new generations.
- The most successful family office leaders are curious, collaborative and candid. They continually seek to help the family accomplish their goals, collaborate across generations and address tough questions head-on.

NAVIGATING TAX CONTROVERSIES WITH A REINVIGORATED IRS

This session discussed the impact of increased funding on the IRS's enforcement efforts, explained the three stages of tax controversies, and provided specific tips to avoid, prepare for and defend against an audit.

TOP TAKEAWAYS INCLUDED:

- The IRS will hire 87,000 employees over the next 10 years and spend billions of dollars to improve its technology, incorporating artificial intelligence and sophisticated data analytics. We expect a significant increase in audits targeting high-net-worth individuals and corporations.
- If you are audited and cannot come to an agreement with the auditor as to adjustments to the tax return, consider the IRS's voluntary Fast Track mediation program, which provides non-binding alternative dispute resolution, before going to IRS appeals.
- Review processes and transactions to identify potential tax risks and make sure to prepare, obtain and maintain documentation necessary to substantiate tax positions. Review existing document retention policies and involve legal counsel to review tax reporting and significant transactions at the beginning of an audit.

WE ARE HERE … NOW WHAT? BEYOND THE BASICS OF THE CORPORATE TRANSPARENCY ACT

Panelists discussed the impact of the new Corporate Transparency Act (CTA) on family offices and clients.

TOP TAKEAWAYS INCLUDED:

- It appears the CTA is not going away.
- Everyone who is a manager or more than a 25% owner should get a FinCEN ID. Applicants must provide personal identifying information and dual-factor authentication is required, but it will simplify things going forward.
- The tough part is determining who is a beneficial owner. The actual filing is simple and does not take long.
- Who is ultimately responsible? For an LLC, the manager is ultimately responsible. For a corporation, it is an officer or director (if no officer is acting). For a partnership, it is the general partner. In reality, the responsibility will likely fall on family offices, who are leading the CTA compliance effort with respect to entities owned by the families they serve.
- Be aware that there is a $591 per entity per day penalty (with no cap) for noncompliance, so get it done.

SHOULD I STAY OR SHOULD I GO? RESIDENCY AND STATE INCOME TAX PLANNING

Panelists explored how different states determine tax residency, how to avoid being considered a tax resident in certain states and what happens when more than one state deems you a resident for income tax purposes.

TOP TAKEAWAYS INCLUDED:

- When changing domicile, preparation is key. With proper notice, your lawyer can help you come up with a checklist of critical items to be completed and things to avoid that will help you accurately document your move to another jurisdiction. It is difficult, if not impossible, to fix certain things after the fact. Follow-through is critical. State taxing authorities have become extremely sophisticated in auditing taxpayers' activity within a state to determine if they are still considered a resident of that state.
- Don't forget about trusts, particularly nongrantor trusts. Watch where the trustee or other fiduciaries are performing the administration of the trust and change the trustee or location of where the work is performed if necessary. Similarly, pay attention to where advisers of directed trusts reside. For instance, if a distribution adviser lives in California, this may subject the trust to California state income tax.

FROM 1.0 TO 2.0: LIFE AFTER THE SALE OF THE FAMILY BUSINESS AND OTHER MAJOR EVENTS

Panelists discussed how to prepare for the sale of a family business. They also addressed post-sale issues, including how to continue the family's legacy, societal and reputational issues, and corporate and tax issues associated with the sale of the business and newfound liquidity.

TOP TAKEAWAYS INCLUDED:

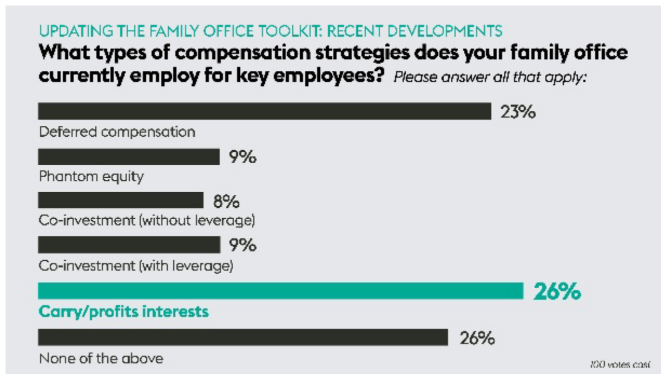
- Selling a business can significantly impact a family's identity, legacy and community presence.
- Seeking family harmony is key and may be achieved through open and honest communication throughout the sale process while striving to obtain consensus on key issues.
- Preparing the family for post-sale lifestyle and business changes is essential. The liquidity and profile of the family may be significantly altered by the sale, and it is important to have pre-sale conversations with the family about if and how they will contribute to the business, and society more generally, post-sale.

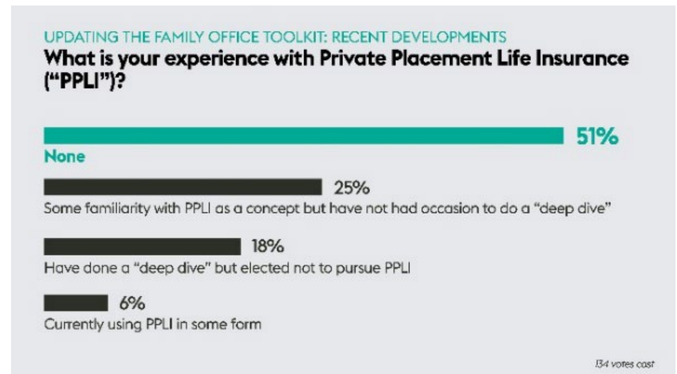
UPDATING THE FAMILY OFFICE TOOLKIT: RECENT DEVELOPMENTS

Panelists discussed multiple tax planning techniques – some new and some tried-and-true – that family offices can implement to maximize tax efficiency and supercharge after-tax investment returns for family members and family office executives.

TOP TAKEAWAYS INCLUDED:

- In the realm of family office tax planning, the horizon extends far beyond conventional strategies, such as profits interest structuring.
- Private placement life insurance might just be the next big tax planning technique for your family office, offering tax benefits similar to a Roth IRA. Don't let the insurance part scare you away.
- Multiple methods of varying complexity and tax benefits are available for compensating family office executives and retaining your talent. There is no one-size-fits-all approach, but there is almost certainly a size that fits your needs.
- Profits interest structuring and implementation was a popular and powerful technique long before the *Lender Management* case and Trump's 2017 tax reform (which repealed deductibility of investment expenses for individuals until 2026) and will likely remain so even if investment expense deductibility comes back into the tax code.
- Qualified small business stock (QSBS) tax savings can be hiding in plain sight, and simple techniques can multiply potential savings. Check with your McDermott counsel if you're setting up an internal operating business or investing in early-stage companies.





WORLD ON FIRE: MANAGING WEALTH MOBILITY IN A COMPLEX GLOBAL ENVIRONMENT

This session examined the complex world of movable wealth and offered insights into important legal, financial and strategic considerations. The panel touched on specific factors to consider before moving abroad, strategies for diversifying assets to moveable wealth and what to do if your accounts are frozen.

TOP TAKEAWAYS INCLUDED:

- Countries are increasingly trying to combat tax avoidance and strengthen tax laws since base erosion and profit shifting (BEPS) practices have cost countries billions in revenue. Most European countries (and their associated offshore jurisdictions), several Southeast Asian countries, Japan, Canada, Australia, New Zealand, South Africa and several Gulf States have announced their participation in a global minimum tax (GMT) at 15% for multinational enterprises with a turnover of more than €750 million. Some countries are going a step further and are looking to establish a personal wealth tax on billionaires.
- Information collected under the Common Reporting Standard (CRS) is not currently made public, and the treaty framework around it does not envisage or require public access to the data. However, some EU countries have passed legislation that requires the collection and publication of beneficial owner information to combat money laundering and terrorism finance.
- More than any other single nationality, American clients are seeking a second passport and/or alternative residence abroad. They're driven by several factors, including freedom of mobility, wealth and mobility preservation, and a backup plan in times of crisis or social upheaval.
- Cryptocurrency is a great option for moveable wealth since it is physically secure, easily accessible, moves seamlessly across borders without restrictions, and has no government or company control, making it a universal currency. However, it is important to be aware of the taxes and reporting requirements associated with holding and moving cryptocurrency across borders.

CYBERSECURITY, EMPLOYMENT LITIGATION AND OTHER THREATS: REINFORCING THE FAMILY OFFICE

This panel explored current threats faced by family offices, including cybersecurity, data breaches, employment issues and litigation. Panelists discussed strategies to secure the family office and provided practical recommendations for responding to threats and breaches.

TOP TAKEAWAYS INCLUDED:

- Threats to the family office can come in different forms, ranging from digital and physical data breaches (perpetrated by outsiders and insiders) to employees misusing personal and private information about the family and family office.

- Physical security sometimes falls by the wayside, but it is crucial to keep track of the data you have and where you have it. Make sure access to your office is limited to those who need it. Access to systems should also be limited, and sophisticated IT vendors should be used. The cost of keeping up is only going to increase.
- Consider requiring employees to sign robust nondisclosure agreements (although state restrictions may apply) and to use devices owned by the family office at all times.
- Most families value privacy above all. Therefore, it is usually best to focus on minimizing media coverage and not giving unnecessary attention to a given incident. Engaging a public-relations firm and forming a PR strategy is often critical. It is also important to evaluate whether to bring in law enforcement.
- All issues with employees, regardless of how small they may seem, should be handled as quickly and amicably as possible to avoid more significant consequences. Never be retaliatory, do not engage in self-help and contact your lawyer early to assist.

STRATEGIES TO SUPPORT STRUGGLING FAMILY MEMBERS

This session offered guidance and best practices on how to help family members navigate difficult issues, including addiction, elder abuse, fraudulent schemes hatched by friends or employees, and a variety of other civil or criminal exposures.

TOP TAKEAWAYS INCLUDED:

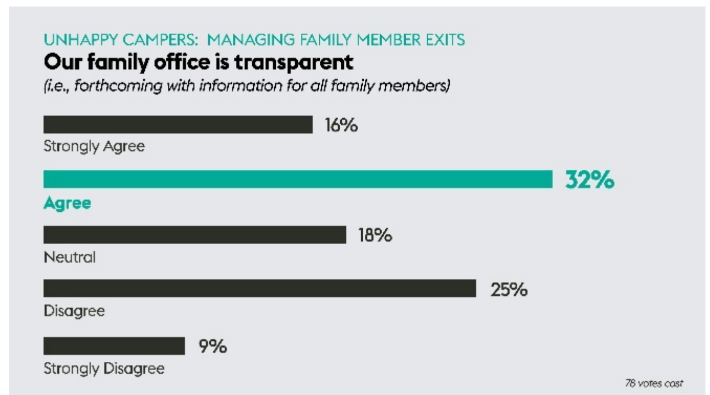
- Struggling family members may include individuals who are facing addiction, which can be defined as "continued use despite negative consequences" and can include an addiction to money.
- It is important to find the best local criminal lawyer to assist a family member who has been arrested or faces criminal charges. Family offices that are concerned can identify lawyers even before criminal activity occurs, and McDermott can assist.
- Family offices involved in the creation of new trusts for family members should consider incorporating discretionary distribution standards (rather than mandatory distributions) and holdback language to provide the trustee with options when confronted with a struggling beneficiary.
- Family offices should be mindful of attorney-client privilege when managing matters for a struggling family member. There are often many parties involved.
- Family offices should have protocols in place for internal and external information-sharing, including nondisclosure agreements and arbitration programs.

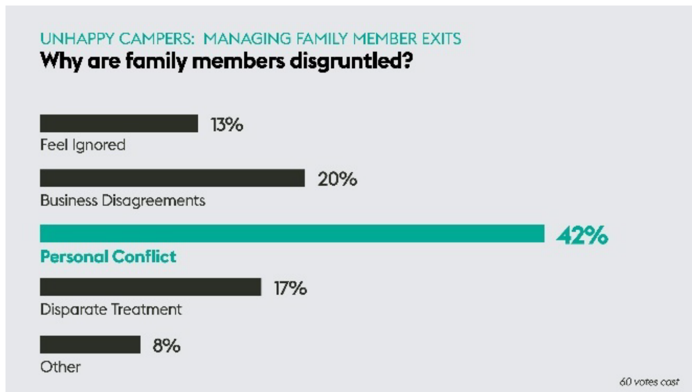
UNHAPPY CAMPERS: MANAGING FAMILY MEMBER EXITS

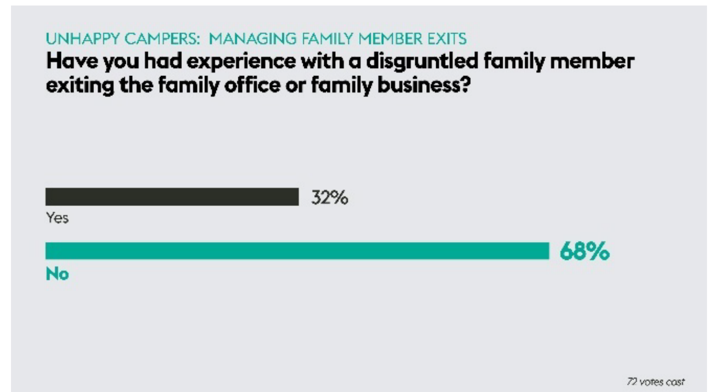
Panelists discussed the many issues that arise when a family member departs the family business, the family office or the family itself; how to proactively recognize and mitigate risks before they escalate; legal, financial and tax considerations that come into play during a family member's exit; and best practices for responding to potential, threatened and actual litigation.

TOP TAKEAWAYS INCLUDED:

- Conflict among family members is inevitable, and individuals will move in and out of the family office. Establishing a plan to address these conflicts in advance is imperative to mitigating disruption.
- Family discord often arises when the human element is removed from planning considerations and planning decisions are motivated solely by taxes. If two people cannot be in a room together, it is probably not a good idea to let them run the family office or family business together.
- Litigation often ensues when reality fails to meet expectations. Clear communication among the family is essential to family harmony.



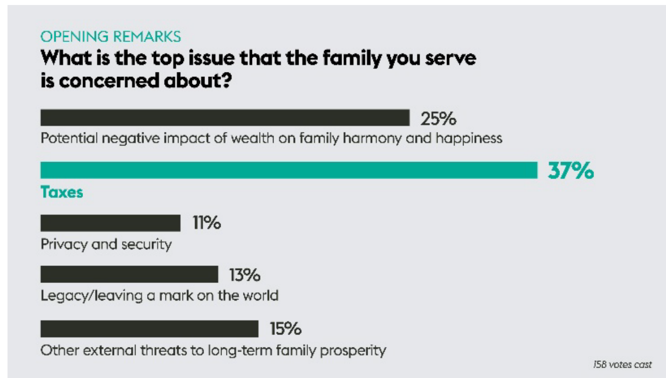


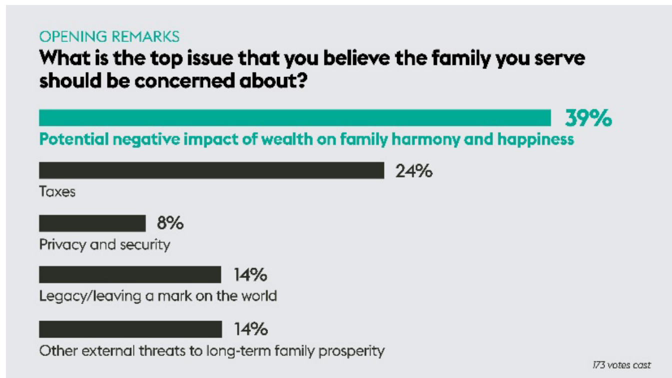


WHAT'S NEXT

Should you have any questions, McDermott's Private Client Group is here to support you in navigating the complexities and opportunities ahead. Please do not hesitate to contact your McDermott lawyer or Neil Kawashima.

Balancing wealth preservation with family harmony and happiness is a challenge for many families





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CHEERS TO 90 YEARS

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