

N E X T



INTERGENERATIONAL WEALTH TRANSFER

**AN OPPORTUNITY TO
PASS ON MORE THAN
WEALTH**

Tidal Marks 1 by Marilyn Wallace-Mitchell

MUCH HAS BEEN WRITTEN ABOUT THE EVER APPROACHING “UNPRECEDENTED” INTERGENERATIONAL WEALTH TRANSFER, IN WHICH BETWEEN AU\$3.5 TRILLION AND AU\$5.4 TRILLION IN ASSETS IS EXPECTED TO PASS FROM THE BABY BOOMERS TO THEIR HEIRS¹.

This wealth transfer will encompass, among other things, residential property, superannuation, significant family businesses and more generally, investments assets (such as shares in Australian and foreign companies).

This transfer represents arguably one of the most important – and presently underappreciated – opportunities to pass on more than just wealth. It is a chance to enable continuity of organisations, culture, values as well as livelihoods painstakingly built. The focus of this article is not estate planning, although that is one element, but rather the options that are available for a Boomer to seek to address the challenges in embedding / creating a culture that continues to embrace responsible business long after the transition.

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¹ Productivity Commission: “Wealth transfers and their economic effects: research paper” November 2021

SETTING THE SCENE

A starting point for the planning to address the risks and embrace the ideals of embedding cultural values, protecting the interests of stakeholders (including employees), mitigating transition impacts and importantly, ensure business continuity is to examine the Boomer's holdings.

Boomer (and their family)'s interests are not usually linear or neat as they are likely to have grown through acquisition and growth based around opportunity rather than careful planning. As such the wealth holding structure(s) are likely to be complex and comprise one or more fixed trusts, discretionary trusts, bare trusts and one or more corporate groups. Further, a family's interest in a corporate group, that provides the main source of wealth, can add to that complexity depending on the longevity of the interest held by the Boomer.

Once a clear picture of the structure is obtained (which in and of itself can be a difficult task), only then can an assessment of how the transition of the benefit of the family wealth take place, through estate planning or otherwise, and equally importantly, how the Boomer seeks to control or embed the cultural principles they have built, protect relevant stakeholders, mitigate transition costs and maintain business continuity.

One way to commence embedding the views of the Boomer is to implement a charter (a constituent document). That charter can be non-binding while the transition is in planning and implementation to ensure that the charter is fit for purpose. Once it is determined (with amendments, if appropriate) to be fit for purpose then the manner in which that charter can become binding will depend on the ultimate structure adopted for the transition.

For those Boomers who are unclear as to how to frame such a charter it has been suggested that ESG principles are an excellent starting place. This is because ESG principles provide an independent framework to develop the form of the values etc. that a Boomer wishes to create after their transition.

This overriding charter can then be supplemented / implemented by establishing or utilising the services of a family office.

Further consistent with the principles of the ESG framework, consideration should be given to determine if a private ancillary fund is also an element that will help embed a sense of philanthropy.

Each of these are considered below.

A FAMILY OFFICE

Simply put a family office in Australia is an entity established to manage the financial, legal, and personal affairs of a high-net-worth family or families. A single-family office is one established by and held for one family. A multi-family office is (usually) a private entity established to provide the relevant services for a number of families to provide the family office services on a more cost-effective basis than a single-family office. Unlike a single-family office, the multi-family office is not wholly owned and controlled by the relevant family, however this does not in and of itself prevent the Boomer from ensuring that the family office operates in accordance with the developing and ultimately binding charter.

A family office does not usually hold the interests of the family, it is merely the manager of the affairs of the family. Notwithstanding that it does not usually own the interest, it can (and usually does) play a pivotal role in how a family's wealth is invested, the manner in which they control those investments and where an existing privately held group is intended to be transitioned (rather than sold and only the wealth transferred), how there is little disruption to the business continuity of that group.

Given this pivotal role, it is essential that the family office has a clear framework under which it should operate. Further, having such a charter developed under the ESG principles may assist the family office (and the relevant decision makers such as advisers) in making decision that do not ordinarily fit or are contemplated by the family charter.

PRIVATE ANCILLARY FUND

If a Boomer is minded towards establishing and maintaining a philanthropic element to their family structure then it is likely that they will have established, or should establish a private ancillary fund (PAF).

A PAF is a deductible gift recipient under the Income Tax Assessment Act 1997 (Cth). As such it allows family groups / high-net-worth individuals to donate funds in a targeted and structured manner. It ensures that they remain involved in the application of those funds to other deductible gift recipients.

A PAF is a charitable trust that can be created through a deed (trust instrument) or will. A PAF is subject to the *Taxation Administration (Private Ancillary Fund) Guidelines 2019* which sets out the governance, compliance and operational requirements. There are numerous (and stringent) requirements to satisfy in order for such a charitable trust to be a deductible gift recipient (and also income tax exempt).

Some noteworthy elements are that a PAF must be not for profit, must operate only in Australia and, distribute the greater of \$11,000 or at least 5% of the market value of the net assets of the PAF in a financial year². It has recently been raised by the Australian Productivity Commission that the minimum distribution be examined, and if appropriate, the Government set the minimum between 5% and 8% of the market value of the net assets of the PAF in a financial year³.

The PAF provides an opportunity to embed in the philanthropic principles of the family group as part of the transition which may not otherwise currently exist (at least formally). Further, it is worth noting that a donation to a PAF will give rise to a tax deduction of the donor so it may be one component of the restructure that allows a Boomer to mitigate a tax impost by embedding a philanthropic element to the family group as party of the transition.

² Subject to the Commissioner of Taxation allowing a reduction in this amount.

³ See Future Foundations for giving: Inquiry report. Australian Productivity Commission 10 May 2024; page 288 for both private and public ancillary funds

A FINAL WORD ON IMPOSTS

While there is no inheritance tax in Australia, estate planning coupled with tax and duty planning remain essential. Further, if the Boomer really wants to achieve the objectives outlined above, the planning for that transition starts long before death so what actually is transferred by way of the Boomer estate may in fact be limited, as the majority of the wealth is likely held by companies and trusts (and other similar investment vehicles).

The complexities of Australia's tax regime overlaid with the States' tax regime mean that the Boomer should carefully plan the transition so that the Federal or State Government or the advisers of family (should a dispute arise), after the transfer, do not receive a greater share of that transfer than would otherwise be the case with careful planning.

The key to mitigating imposts on the transition is to start with a framework or charter and then examine the holdings of the Boomer. It is only when that framework or charter is established (whether binding or not) can the holdings be examined to see whether a restructure is necessary to ensure that all relevant holdings fall under that charter and whether there are any elements within that structure that would work against or cause an impost on a transition.

Where a restructure is required, it will be important to consider whether there is any restructuring relief for income tax or duty, the absence of which would usually give rise to an impost. In some cases, such an impost may be necessary to implement the desired transitional restructure.

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