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2024 Estate and Gift Tax Conference

Panel 3: Simple(ish) Yet Elegant Planning for High Net Worth Clients

Thursday, March 21, 2024

10:45am - 11:45am

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Conference Reference Materials

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Simple(ish) Yet Elegant Planning for UHNW Families

March 21, 2024

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Bryan D. Kirk is currently **Development Legal Counsel** for Stanford University. He is a Fellow of the American College of Trust and Estate Counsel and certified specialist in Estate Planning, Trust and Probate Law. Bryan enjoys working with individuals, families and charitable institutions on issues related to philanthropy and estate planning. He regularly writes and presents on these topics, including publications in *Trusts & Estates*, *Estate Planning*, and *Journal of Financial Planning*. Prior to joining Stanford, he led estate and financial planning for Fiduciary Trust International and practiced trust and estate law in Northern California. He is a graduate of U.C. Berkeley School of Law (2004, J.D.), Santa Clara University's Jesuit School of Theology (2022, M.T.S.) and Claremont McKenna College (2000, B.A.).



David Y. Oh, Head of Tax and Estate Planning at Arta Finance, is a trusts and estates advisor with broad experience in estate planning and administration. He advises clients on matters including tax planning, tax compliance, wealth transfer techniques, and charitable strategies. Most recently, David was a Managing Director and Trust Counsel at Fiduciary Trust International, where he provided tax, estate, and wealth planning solutions to founders, executives, private equity partners, and family offices. Prior to that, he was Director of Tax and Estate Planning at Charles Schwab, where he consulted on preserving multigenerational family wealth. He earned a Master of Laws (LLM) in Taxation at Boston University, Juris Doctor from University of the Pacific, and Bachelor of Arts in Legal Studies from University of California, Berkeley. He is a Certified Specialist in both Taxation Law as well as in Estate Planning, Trust and Probate Law by the State Bar of California. David sits on the boards of Continuing Education of the Bar and the Estate and Gift Tax committee of the California Lawyer's Association.

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Today's Objectives

By the end of this session, you should be able to:

- Identify UHNW Families
- Understand Planning Process for UHNW Families
- Know Some Options for Trustee Arrangements for UHNW Families
- Be Familiar with Some Common Issues in Charitable Planning for UHNW Families
- Be Aware of Some Approaches for Addressing California Connections of UHNW Families

Framework

Defining UHNW Families and Simple(ish) Yet Elegant Planning

Defining UHNW Families

- Over \$20-25 million investable assets
- Over \$100 million net worth
- Top 0.1% averaged \$72 million in net worth in 2012 yet represented 22% of total wealth (Saez and Zucman 2016)

Defining “Simple(ish) Yet Elegant Planning”

- Goal-driven wealth transfer
- Less administratively burdensome than it could be
- Not “aggressive”
- Makes client happy

Example: Annual Exclusion to the Max

- Client wanted to support all her descendants and their spouses
- Outright cash gifts of annual exclusion to each
- \$400,000 of tax savings each year with no trusts or “complex” planning
- A main source of connection and joy

Example: Chouinard Family

- Patagonia founder wanted to preserve culture, mission and impact of company
- Non-voting stock (98%) to Holdfast Collective, a 501(c)(4) social welfare organization
- Voting stock (2%) to Patagonia Purpose Trust, an irrevocable trust guided by the family to protect the company's mission and values
- “Truth be told, there were no good options available. So, we created our own.”

Planning Process and Examples

How UHNW Families are Different

- FLP
- Grantor Trust
- GRAT
- ILIT
- ING Trust
- QPRT
- CRT
- CLT
- Installment Sales
- Loans
- CRT
- CLT
- Private Foundation
- DAF
- Charitable LLC
- Supporting Org
- Social Welfare Org
- Pledge
- Gift Agreements
- Etc.

Planning Process

- Identify Goals
- Optimize Options to Achieve Goals
- Test out Goals
- Review and Revisit Goals

Regular Gifting

- Where and how is the client giving today?
- Insight and guidance into bigger picture goals
- Sense of client's analytical, risk and administrative appetite
 - Scope of gifting (range of donees and property interests)
 - 529 plans, direct tuition and medical payments, appreciated stock v. cash, purpose gifts
 - History of impact and reaction

Testamentary CLT

- Eliminate estate tax
- Gradual build-up of philanthropy
- Reserve potential amount for family

- Achieve goal for grandchildren or great-grandchildren
- Insure lives of lower generation (e.g., children) with single payment
- Couple with letter of wishes and family values

Early-on GRAT

- Concentrated asset with growth potential
- Toe to full body in the water of wealth transfer
 - Money to lower generation – communication, impact, involvement
 - Tax planning (asset substitution, rolling)
 - Reference point to determine goal
- Low overhead

Flexible Beneficiary and Grantor Trust

- Irrevocable trust with broad class of potential beneficiary
- Also, options to toggle off grantor trust power and grant powers to render grantor trust, including section 678 powers
- Allows ongoing goals discernment
- Allows ratchet up or down of administrative and tax trade-off's

Trustee Arrangements

So many trusts, so few truly suitable trustees

Differentiating the Options

- Corporate trustee: assume damages, avoid breach
- Individual trustee: assume breach, avoid damages

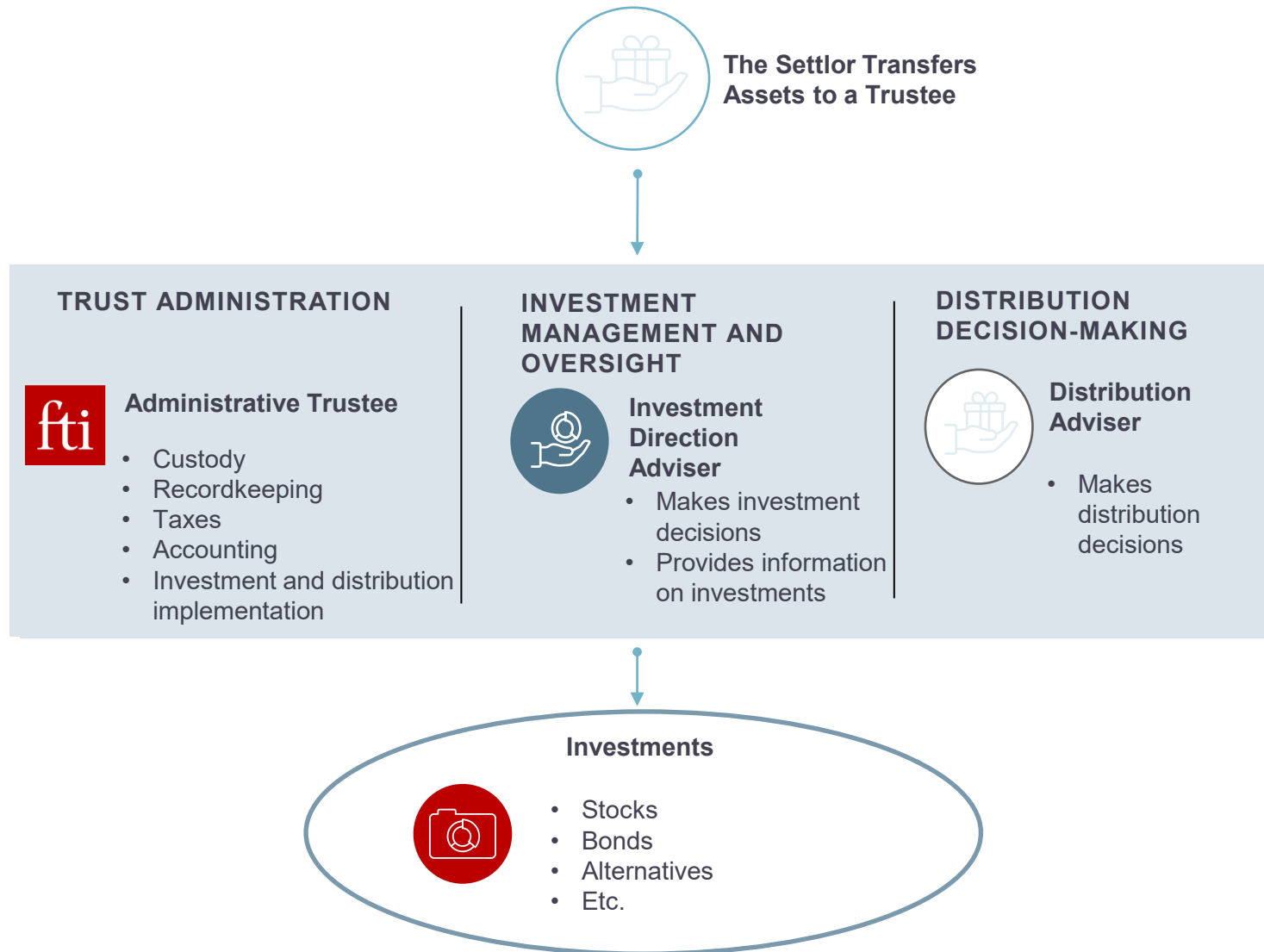
Options with the Options

- Family
- Trusted Individual
- Corporate Trustee
- Trusted Professional
- Professional Trustee
- Private Trust Company
- Discretionary
- Directed
- Co-Trustees
- Trust Protectors
- Committee or Special
- Delegation

Straightforward(ish) Trust Arrangements

- Letters of wishes with discretionary trustee
- Delegation of investment and administrative tasks to corporate trustee as agent
- Investment committee for a discretionary trustee
- Special asset trust
- Directed trust with LLC

Directed Trust with LLC



Charitable Planning

Common problems and possible solutions

Common Problems

- Long list of charitable bequests and multiple charitable remainder persons
- Broad or uncertain or large-scale impact desired
- Concentrated and unique assets (uncertain source)
- Desire for control and legacy protection

Possible Solutions

- Conduit DAF
- Supporting Organizations, (c)(4)'s and Charitable LLCs
- Pledges with Optionality
- Foundation Clawback

California Connections

Strategies to avoid unintended California taxes

Easy Answer to Residency Questions

- Move

Other California Problems

- Throwback tax for Beneficiaries
- Non-CA trust but with estate
- CA resident managers for entities
- CA pseudo-trustees

Conclusion

Summary

During this session, you have learned:

- Identify UHNW Families
- Understand Planning Process for UHNW Families
- Know Some Options for Trustee Arrangements for UHNW Families
- Be Familiar with Some Common Issues in Charitable Planning for UHNW Families
- Be Aware of Some Approaches for Addressing California Connections of UHNW Families

Thank You!