



CUTTING THROUGH THE CHAOS: STRATEGIES FOR MITIGATING TAX & COMPLIANCE RISKS IN FAMILY OFFICES

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QUESTION SUBMISSIONS

During this webinar you can submit questions through the Zoom Q&A function.

- The presenters will answer questions at the end of the presentation as time permits.
- If your question is not addressed live, the presenters will do their best to answer your question via email.

AUDIT RISKS

- Drain resources
 - Diversion of time and attention, plus professional fees
- Tax exposure
 - U.S. Federal tax, penalties and interest
 - Other state, local or international taxing authorities
- Civil liability
 - Officers, directors, fiduciaries
- Exposure of sensitive and potentially harmful information

STRATEGIES:

- Internal Controls and Procedures
 - Document creation and execution
 - Actively manage document retention and information requests
 - Confidentiality and security process and procedures; communication protocols
- Proactive Analysis
 - Identify and quantify risks
 - Reduce exposure
 - Minimize audit triggers
 - Cultivate evidence of facts necessary to achieve successful result

INTERNAL CONTROLS & PROCEDURES: GETTING “AUDIT-READY”

- Documentation:
 - Review corporate governance of family entities and roles of various family members as owners, directors and officers of those entities.
 - Document transactions and key areas of risk.
 - Establish client intake procedures and have written service agreements.
- Depending on complexity, policies and procedures may be tested periodically through an internal control review by third party accounting firm familiar with family offices.

INTERNAL CONTROLS & PROCEDURES: DOCUMENTATION EXAMPLES

- Establish proper documentation of family office structure to reflect its operation as a trade or business.
- If a family member materially participates in a trade or business activity, establish contemporaneous records corroborating the relevant activities.
- Document intrafamily loans and administer promissory notes carefully in accordance with their terms.
- Obtain written advice for potential tax risks and issues.
- However, review document retention policies so only necessary documents are retained.

INTERNAL CONTROLS & PROCEDURES: EXAMPLES OF SPECIAL ISSUES

- If the family foundation is a client and/or the family office helps with charitable giving by the family, the family office should adopt special policies addressing the “self-dealing” rules and related issues.
- If a client has multiple residences, the family office should analyze the client’s legal domicile, and if necessary, prepare contemporaneous documentation as appropriate.
- For air and watercraft, the family office should adopt a policy to document personal versus business use.
- For valuable tangible personal property, the family office should retain proper records reflecting ownership, valuation, insurance.

OTHER REGULATORY PLAYERS

- Family Office Exemption to Investment Advisors Act of 1940.
 - Who can be a family client?
- Federal laws (the Equal Employment Opportunity Commission, the Americans with Disabilities Act, and the Patient Protection and Affordable Care Act).
- State and local business laws and regulations (e.g., business licenses, franchise taxes).

PROACTIVE ANALYSIS

STEP 1: DEFINE THE PRIORITIES & PROCESS

- Discuss concerns, priorities and goals.
- Explain objectives to advisors and employees and seek their input.
- Formulate document collection and management process tailored to current and anticipated needs.
- Instruct family and team about procedures to protect privileges.
- Navigate any scheduling conflicts that may impact the process.
- Establish timeline and expectations for periodic and final reporting.

PROACTIVE ANALYSIS

STEP 2: **SHAPE** THE INQUIRY

- Spot issues and prioritize areas of focus through review of key documents and preliminary legal analysis.
- Harness resources to design an effective and efficient plan for developing relevant facts.
- Assess scope of potential exposure to ensure that it justifies cost of further analysis.
- Propose investigative plan and budget.
- Ensure alignment of priorities and allocation of resources.

PROACTIVE ANALYSIS

STEP 3: MASTER THE FACTS

- Manage document collection and staged review.
- Analyze facts as they develop to maintain focus on issues that matter.
- Secure interviews of witnesses and, if necessary, sworn statements on critical facts.
- Think about what helpful information might exist outside the family's control and how to access or preserve it.
- Enlist expert assistance, as needed.
- Recognize when additional investigation is valuable and when it may be counter-productive.

PROACTIVE ANALYSIS

STEP 4: **ASSESS** RISKS & MITIGATION TECHNIQUES

- Assimilate all facts learned from various sources.
- Scrutinize any inconsistencies and ways to strengthen existing documentation.
- Survey potential outcomes and quantify exposure.
- Evaluate pros and cons of available techniques for mitigating risks.
- Select strategies that are tailored to the family's goals and level of risk tolerance.
- Synthesize the mitigation strategies into an integrated action plan.

PROACTIVE ANALYSIS

STEP 5: EASE THE MIND

- Explain potential outcomes, options and integrated action plan.
- Assist with implementation.
- Stand ready to defend any audit, investigation or litigation and manage any related crisis.
- Ensure that any new planning is done with sensitivity to existing concerns.

HOT TOPICS

- Private foundations
- Charitable contributions
- Material participation
- Trade or business
- Executive compensation
- Cryptocurrency
- Valuation
- Foreign reporting

THANK YOU



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