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With us magazine: pinpointing the right location

04 OCTOBER 2016

CATEGORY:
FEATURE

CLIENT TYPES:
FAMILIES AND FAMILY OFFICES

The location of a family office is a critical issue. Tax regimes, political stability, legal certainty and the calibre of local financial and professional services are all important considerations. But ultimately the questions that drive the final decision will be: Where do family members and trustworthy management want to live and work? Where is the main focus for investment activity and personal services?

Ivan Sacks, Withers' chairman explains: "A family office in the home location can be appropriate. In fact, close to home can often be the best solution because it saves money and fits the profile of the family. One of the best, most productive family office moves I worked on was from New York to Virginia, because the right people to give it substance wanted to move there and we worked out the tax and other efficiencies to make it work. It can be a nuanced discussion and the solution should be bespoke in every case. Many factors go into it and particular family issues call for distinct approaches."

Stateside advantages

For privacy, safety and access to best-in-class services or laws, it's quite commonplace for administration to be handled in one country, with investment activities coordinated elsewhere from one of the world's leading financial centres. Ivan continues: "It's important to remember that the office itself does not need to be the location for tax on income. The US has advantages in that regard. Investment management arrangements can be structured so that service-level agreements use offshore asset holding structures that can give tax neutrality, even if managed from the US."

"The US also often wins out on availability of talent and attractiveness for living. We find that family offices from abroad tend to head to the NYC area, West Coast or Miami. For US families, and increasingly for some international families, designer jurisdictions in other states are increasingly popular, including South Dakota, Wyoming, Nevada and New Hampshire. Along with Delaware, these states are increasingly well known for their state tax neutrality, use of private trust company legislation and structural advantages for fiduciary management."

Benefits aside, consideration should be given to the deepening of financial regulation in the wake of the Dodd-Frank Act. It's now essential for families locating in the USto take regulatory advice on their plans, as Ivan sums up: "Without the right advice, families will be at risk of becoming subject to US Securities and Exchange Commission registration and associated compliance, expense and loss of privacy. That said, because of exceptions to the application of the regulation – sometimes called the 'Family Office exception' (which Withers was closely involved in influencing) – in most cases family offices can function in the US without becoming subject to those rules, provided clientele are limited to one family and a limited number of associates."

London calling

The UK is, of course, another hugely popular location for family offices. Withers' consultant Jeremy Arnold puts this into perspective: "An important factor influencing location will be where the best talent is located and this may create a tension between the family's particular wants and the needs or availability of senior and experienced professionals. The expert banking and finance skills needed may only be available in a different location from where the family is based."

"European families can have an aversion to locating in the US and triggering some of the issues that come with US extra-territoriality. However, in reality, the office must follow the money, and be near money managers and the money itself – whether that be where it's banked or where it is being invested. If a family is carrying out hedge fund and private equity investments in the US, it may want a US office to oversee this activity."

Unlike some other jurisdictions the UK does not actively offer incentives to attract family offices. Jeremy continues: "One can't go and speak to regulators and get a definitive tax ruling here, as one sometimes can elsewhere in Europe. Management control is the biggest issue if family offices are based in London. Even UK-resident directors can create issues, and board meetings must be held elsewhere."

“Overall though, UK regulation is not too onerous. Provided the family office is only managing its own money, there’s no need for UK Financial Conduct Authority (FCA) approval and regulation. But it’s important to remember that if the office is managing other’s money, or has third-party investment, then approval will be required, and the FCA disclosure regime is one of the most intrusive around.”

Choosing Swiss stability

With a reputation for stability, security and good quality of life, Switzerland is another attractive destination, borne out by around 100 single family offices and 500 multi-family offices locating themselves there. As head of Withers’ Swiss operations, Justine Markovitz, explains, the regulatory climate can be a major draw: “Switzerland has over 60 tax treaties with other countries, which can be very helpful for international families. It is also possible to negotiate tax rulings with individual cantons and this can prove to be extremely advantageous.”

“The eventual tax ruling will depend on the set up of the office; how it is owned; how many people it’s employing; what assets it’s bringing in or managing; and what services it will offer. For example, if it is providing asset management services or auxiliary management services to foreign subsidiaries, rather than carrying out ordinary commercial transactions in Switzerland. The principal of the family office would typically show their business plan to the canton and discuss the various tax options, negotiating, for example, the pricing of services rendered to the principal.”

Where banking regulation is concerned, family offices working solely for the family do not generally need a licence. But under anti-money laundering rules, they must be a member of a self-regulating authority or submit to the Swiss financial market authority. Family offices must be regulated if they are engaged in collective investments.

Switzerland is a high-cost environment and rent is expensive. But, as Justine points out, lay-offs by a number of banks and financial intermediaries based in the country mean that skilled financial professionals, always in high demand, are available on the market: “Family offices look for long-term relationships with their staff and want trusted advisers. It’s easier now to find and recruit these people, although consideration should be given to the typically high compensation packages that professionals from private banking backgrounds will expect.”

Eastern approaches

Many jurisdictions have upgraded their legislation in a bid to attract family offices. Hong Kong is one of them, and large numbers of Hong Kong- and PRC-based families are now located there (along with some Europe-based offices that have set up satellites to manage their Asian investment activities). Withers’ partner Katie Graves profiles the local environment: “Wealthy PRC families often look to establish a base here. The issue for PRC families is getting funds offshore and having a family office in Hong Kong is extremely convenient. We also benefit from quite a favourable tax regime, in terms of rates and scope and, with careful structuring, profits can be kept offshore.”

“Families should, however, investigate whether a licence will be required for investment management work and, if so, whether an exemption is available, depending on the family office’s activities. If it’s a wide scope, third-party investment for example, then there’s tighter regulation.”

The focus for family offices in Hong Kong is often on investments, and whether they can find suitable people to advise them in that area. Katie Graves continues: “If a family office is simply looking for a CIO then it will be able to find suitable people from the international banks based here. But recruitment can be challenging for more sophisticated family offices, with smaller pools of experts in some niche areas.”

Speaking from Withers KhattarWong’s Singapore office, partner Leon Kwong Wing outlines the country’s appeal: “Singapore scores well on efficiency. Much of the interaction with government offices here can be conducted online, and criteria and requirements for various applications are usually clearly set out. On top of that, personal safety, security of property and low crime rates are all major draws.”

“Many foreign law firms, trust companies, and other service providers now have Singapore offices, meaning it’s both possible and convenient to meet and speak face-to-face. Immigration procedures are generally quick and straightforward, and political certainty is not an issue.”

Singapore is making strides to encourage family offices to set up a base through its a residence-by-investment programme, which includes ‘Family Office’ as one of the approved investment sectors for Singapore permanent residence. The basic requirement is a S$2.5 million (less than £1.2 million) equity investment in the family office entity, which needs to employ at least five Singapore citizens/permanent residents. Its annual business spending needs to be at least S$1 million (under £500,000).

Another big attraction is Singapore’s system of taxation and the complete absence of resident non-dom rules, as Kwong Wing explains: “Singapore taxation is territorial and individuals are totally exempt on foreign-sourced income of any description. As such, they can bring in as much as they please from outside Singapore tax-free.”

Preparing for increased regulatory scrutiny

Looking ahead, family offices will be closely monitoring developments at a global level. Increased regulatory scrutiny in countries around the world is likely to see many single family offices transformed into registered investment companies. Regardless of where they’ve chosen to locate themselves, in the run-up to this next phase, the focus for family offices will be on enhancing governance and more closely defining the scope of their activities

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