



Intergenerational wealth transfer

An opportunity to pass on more than wealth

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Much has been written about the ever approaching ‘unprecedented’ intergenerational wealth transfer, in which between A\$3.5 trillion and A\$5.4 trillion in assets is expected to pass from the Baby Boomers to their heirs.¹ 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 paper is not estate planning, although that is one element, but rather the options that are available for Boomers to seek to address the challenges in embedding/creating a culture that continues to embrace responsible business long after the transition.

Setting the scene

A starting point for the planning to address the risks and embrace the ideals of entrenching cultural values, protecting the interests of stakeholders (including employees), mitigating transition impacts and importantly, ensuring business continuity is to examine Boomers’ holdings.

Boomers’ interests and those of their families are not usually linear or neat. Rather, they are likely to have developed through acquisition, with growth based around opportunity as opposed to careful planning.

As such, the wealth holding structure(s) are likely to be complex and comprise one or more fixed trusts [distribution of assets to beneficiaries is predetermined/fixed by the trust deed], discretionary trusts [distribution of assets and income is at the trustee’s discretion, but usually there is a taker in default if no discretion is exercised], bare trusts [the beneficiary has the absolute right to the assets and income held by the trustee] and one or more corporate groups.

Further, a family’s interest in a corporate group, which 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 takes place, through estate planning or otherwise. Of equal importance is how Boomers seek to control or entrench the cultural principles they have built, protect relevant stakeholders, mitigate transition costs and maintain business continuity.

One way to commence embedding a Boomer’s views 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 it is fit for purpose. Once 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 environmental, social and governance (ESG) principles are an excellent place to start. This is because ESG principles provide an independent framework to develop the form of the values etc. that Boomers may wish 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 instil a sense of philanthropy.

Each of these aspects are examined in the following sections.

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 to a number of families on a more cost-effective basis than a single-family office. Unlike a single-family office, a multi-family office is not wholly owned and controlled by the relevant family, however, this does not in and of itself prevent Boomers 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. Instead, it is merely the manager of the family's affairs. Notwithstanding that it does not usually own the interest, can (and usually does) play a pivotal role in how a family's wealth is invested; the manner in which the family controls those investments; and where an existing privately held group is intended to be transitioned (rather than sold and only the wealth transferred), minimise 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 ESG principles may assist the family office (and the relevant decision-makers such as advisers) in making decisions that do not ordinarily fit nor are contemplated by the family charter.

Private ancillary fund

If Boomers are inclined towards establishing and maintaining a philanthropic element in relation to their family structure, 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*. As such, it allows family groups/high-net-worth individuals to donate funds in a targeted

and structured manner and 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, and subject to the *Taxation Administration (Private Ancillary Fund) Guidelines 2019* which sets out the governance, compliance and operational requirements. Further, 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 its net assets in a financial year.²

The Australian Productivity Commission has recently proposed that the minimum distribution be examined and, if appropriate, the federal government set the minimum between 5% and 8% of the market value of the PAF's net assets in a financial year.³

A PAF provides an opportunity to integrate 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 for the donor. Thus, it may be one component of the restructure that allows Boomers to mitigate a tax impost by embedding a philanthropic element within the family group as a party to the transition.

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 Boomers really want to achieve the objectives outlined previously, planning for that transition needs to start long before death so what actually is transferred by way of their estate is in fact 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 overlayed with those of its states and territories means that Boomers should plan the transition carefully so that the federal or relevant state/territory government or the advisers of family members (should a dispute arise), do not receive a greater post-transfer share of the estate than would otherwise be the case with careful planning.

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

Where a restructure is required, it is important to consider whether there is any restructuring relief for income tax or duty, the absence of which would usually give rise



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**The quote**

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to an impost. However, in some cases, such an impost may be necessary to implement the desired transitional restructure. **FS**

Notes

1. Productivity Commission, *Wealth transfers and their economic effects: Research paper*, Commonwealth of Australia, Canberra, November 2021.
2. Subject to the Commissioner of Taxation allowing a reduction in this amount.
3. See *Future foundations for giving: Inquiry report*, Australian Productivity Commission, Commonwealth of Australia, Canberra, 10 May 2024, p. 288 for both private and public ancillary funds.