ATTORNEYS AT LAW
THE ANDERSEN FIRM
A PROFESSIONAL CORPORATION

ESTATE PLANNING • ESTATE SETTLEMENT
ESTATE LITIGATION • ASSET PROTECTION

July, August & September 2016

Financial Advisor Current Events Update

Topic **Pg.**

www.TheAndersenFirm.com | 866.230.2206

New York Office
110 E. 37th Street
New York, NY 10016

South Florida Office
500 East Broward Boulevard
Suite 1600
Fort Lauderdale, FL 33394

West Florida Office
7273 Bee Ridge Road
Sarasota, FL 34241

Tennessee Office
862 Med Tech Parkway
Suite 200
Johnson City, TN 37604

Reflection of the Quarter:

FOUR THINGS
YOU CAN'T RECOVER

THE *Stone* AFTER THE THROW.
THE *Word* AFTER IT'S SAID.
THE *Occasion* AFTER IT'S MISSED.
THE *Time* AFTER IT'S GONE.

- **Author Unknown**

ON THE LIGHTER SIDE

Lawyers should never ask a Georgia grandma a question if they aren't prepared for the answer. In a trial, a Southern small-town prosecuting attorney called his first witness, a grandmotherly, elderly woman to the stand.

He approached her and asked, "Mrs. Jones, do you know me?"

She responded, "Why, yes, I do know you, Mr. Williams. I've known you since you were a boy, and frankly, you've been a big disappointment to me. You lie, you cheat on your wife, and you manipulate people and talk about them behind their backs.

You think you're a big shot when you haven't the brains to realize you'll never amount to anything more than a two-bit paper pusher. Yes, I know you."

The lawyer was stunned. Not knowing what else to do, he pointed across the room and asked, "Mrs. Jones, do you know the defense attorney?"

She again replied, "Why yes, I do. I've known Mr. Bradley since he was a youngster, too. He's lazy, bigoted, and he has a drinking problem.

He can't build a normal relationship with anyone, and his law practice is one of the worst in the entire state.

Not to mention he cheated on his wife with three different women. One of them was your wife. Yes, I know him."

The defense attorney nearly died.

The judge asked both counsellors to approach the bench and, in a very quiet voice said, "If either of you idiots asks her if she knows me, I'll send you both to the electric chair."

PRESIDENT OBAMA'S CRACKDOWN PROPOSALS ON ESTATE PLANNING

This past February, the same as every year before , the President creates a budget request which Congress considers when coming up with their own budget resolution. This proposal frequently contains potential tax law changes. This year was no different, and the proposal includes a wide range of crackdowns on individuals.

Given this is an election year, it is not likely these proposals will become law,. Nonetheless, they do shine a light on what could be on the chopping block should any legislation occur where Congress might need a revenue offset to cover it's cost.

As you may easily guess this article will focus on the Estate Planning Crackdowns. The table below identifies all areas that could affect individuals.

PRESIDENT OBAMA'S PROPOSED CRACKDOWNS FOR FY2016-2017					
ESTATE PLANNING CRACKDOWNS	Establish 10-Year Minimum Term for GRATS	Require Property Sold to an IDGT to be included in the Estate	Create 90-Year Maximum Term to Prevent Dynasty Trusts	Limit Total Present Interest Gifting Through Crummey Powers	Eliminate Step-Up in Basis, Replaced with Deemed-Sale-At-Death Rules
RETIREMENT PLANNING CRACKDOWNS	Prevent Roth Conversations of After Tax Dollars (Eliminate Backdoor Roth Contributions)	Add RMDs at Age 70½ for Roth Accounts	Require 5-Year Rule for Non-Spouse IRA Beneficiaries (Eliminate Stretch IRA)	Prevent new Retirement Contributions for Those with >$3.4M in Account Balances	Repeal NUA Rules for Employer Stock in and Employer Retirement Plan
OTHER INCOME TAX "LOOPHOLE CLOSERS"	Limit 1031 Like-Kind Exchanges of Real Estate to Maximum $1M Gains Deferral	Require Average Cost for All Stock Sales (No More Specific Lot Identification or FIFO/LIFO Choices)	Apply 3.8% Medicare Surtax on Investment Income to Passive S Corp Dividends	Limit Transfer-for-Value Rules for Buyers of Life Settlements	

ESTABLISH 10-YEAR MINIMUM TERM FOR GRATS:

A Grantor Retained Annuity Trust (GRAT) is an irrevocable trust in which the grantor transfers assets into the trust and retains the right to annual payments of a fixed amount of principal and interest for a prescribed number of years. An appropriate time to use a GRAT is when you have an asset that you expect to appreciate significantly which you will want to eventually pass on to beneficiaries.

To crack down on the strategy, the President's budget proposes the GRAT must have a minimum term of ten years and a maximum term of the life expectancy of the annuitant plus ten years. This largely eliminates the relevance of rolling GRATs and introduces far more risk to the equation for the grantor.

Also, the remainder interest would have to have a value greater than 25% of the value of the assets contributed to the GRAT or $500,000, and any decrease in the annuity during the GRAT term and any tax-free exchange of any asset held in the trust would be prohibited.

Crackdowns Continued. . .

REQUIRE PROPERTY SOLD TO AN IDGT TO BE INCLUDED IN THE ESTATE:

To crush the value of the GRAT strategy even more, the proposal would require during any situation where a grantor does a sale or exchange transaction with a grantor trust, that the value of any property that was exchanged *into* the trust remains in the estate of the grantor. This means the asset is included in the grantor's estate at death, *and subject to gift tax during life when the trust is terminated and distributions are made to a third party*. Therefore any remaining value of a GRAT distributed to beneficiaries at the end of its term would still be subject to gift taxes.

This results in an even more significant crackdown related to one of the best techniques used with High and Ultra High Net Worth clients, the Intentionally Defective Grantor Trust or IDGT. The crackdown on transfers using a sale to a grantor trust would indirectly also eliminate estate planning strategies that use an installment sale to an intentionally defective grantor trust (IDGT), as the inclusion of the property exchanged into the trust would prevent the grantor from shifting the appreciation outside of the estate.

CREATE 90-YEAR MAXIMUM TERM TO PREVENT DYNASTY TRUSTS:

An old legal principle, called the "rule against perpetuities," was used to prevent the existence of trusts that "last forever." The rule basically stated that a trust could not last more than 21 years beyond the lifetime of the youngest beneficiary alive at the time trust was established.

In recent years, many states have repealed the rule against perpetuities, clearing the way for dynasty trusts. Some states, Florida for example, has gone further by luring trust-makers with tax breaks and flexibility, including strong protection if beneficiaries divorce or get into debt. These "dynasty" trusts could potentially go on indefinitely for a family and allow the indefinite avoidance of estate and generation skipping taxes for future generations.

The biggest advantage of a dynasty trust is that it can save your descendants a significant amount of money in estate taxes. The assets you put in the trust (plus any increase in their value over the years) are subject to the federal gift/estate tax just once, when you transfer them to the trust. They are not taxed again, even though multiple generations benefit from them.

The crackdown by the President's budget proposal would cause the Generation Skipping Transfer (GST) Tax exclusion to expire 90 years after the trust was created. As a result, the GST Tax itself could then be applied to subsequent distributions or terminations of the trust, eliminating the ability for subsequent skipping of estate taxes for future generations.

A small saving grace is the proposed rule would only apply to NEW trusts created after the rule is enacted, and not to existing trusts. ***Disappointingly, another crackdown is that any new contributions to existing trusts would still be subject to the new rules as proposed.***

Additionally the President's proposal would restore the estate, GST and gift tax exemption and rates to 2009 levels. Thus, the top tax rate would be 45% and the exclusion amount would be $3.5 million for estate and GST taxes and $1 million for gift taxes.

LIMIT TOTAL OF PRESENT INTEREST GIFTS THROUGH CRUMMEY POWERS:

In order for a gift to qualify under the annual gift tax exclusion ($14,000 for 2016), a caveat established under IRC Section 2503(b)(1) states the gift must be a "present interest" gift to which the beneficiary has an unrestricted right to immediate use.

This ruling makes it difficult to use annual gifting for gifts to trusts as the distributions from the trust may not occur until much later in the future. Therefore a beneficiary would not have immediate use of the gift.

Crummey notices are the classic strategy used to work around this rule. These notices provide beneficiaries the immediate opportunity to withdraw gifts when they are first contributed thereby ensuring that it is a "present interest" gift.

The IRS has issue not with the Crummey powers, but with the very large number of Crummey beneficiaries, which allow donors to gift significant amounts out of thier estates.

The crackdown takes place with the proposal to alter the tax code to eliminate the present interest requirement for gifts to qualify for the annual gift tax exclusion, and ADD a new category of future-interest gifts. All future-interest gifts per donor, no matter the number of beneficiaries can only total $50,000 per year.

Keep in mind, this would not replace the $14,000 annual gift tax exclusion. It does however, add an additional layer that limits the cumulative number of up-to-$14,000 per-person gifts if they are in one of the new categories.

Example: If six $14,000 gifts were made to six beneficiaries of a trust, for a total of $84,000 of gifts, each $14,000 gift might have individually been permissible, but the additional $34,000 would be a taxable gift as it exceeds the $50,000 threshold.

We should also note that because this potential new category includes "transfers of interests in pass-through entities", the rule could be used to limit present-interest gifting of family limited partnership shares across a large number of family members!

ELIMINATION OF STEP-UP IN BASIS, TO BE REPLACED BY A REQUIRED SALE AT DEATH RULE.

In 2010, Congress repealed the existing rules allowing for a step-up in basis, to be replaced with a rule for "carryover cost basis" from the decedent to the beneficiary.

The President's budget proposes to simply tax all capital gains at death, as though the decedent had liquidated all holdings. The capital gains would be reported on the decedent's final income tax year, and gains could be offset by any capital losses in that year, and/or any capital loss carry forwards.

There would an exclusion for the first $100,000 of capital gains, in addition to a $250,000 exclusion for any residence. Household furnishings and personal effects would be excluded from consideration.

Assets bequeathed to a surviving spouse would still retain a carryover in basis, and any unused capital gains exclusion would be portable and carry over. Any transfers to a charity at death would also not be subject to the capital gain trigger.

To avoid lifetime avoidance of the tax through gifting, the proposal would also eliminate carryover cost basis for gifts, and instead require the same capital-gains-upon-transfer rule for a lifetime gift.

WHERE DO PRESIDENTIAL CANDIDATES STAND ON ESTATE TAXES?

With the 2016 presidential election campaign in full swing, it's worth taking a peak at this chart indicating where the presidential candidates stand on estate taxes .

BERNIE SANDERS

Increases the top estate tax rate to 65%, and lowers the estate tax exclusion to $3.5 million.

HILLARY CLINTON

Increases the top estate tax rate to 45% and lowers the estate tax exclusion to $3.5 million.

DONALD TRUMP

Eliminates the estate tax.

GARY JOHNSON

No specific proposal.

WHITE HOUSE ON INDEPENDENCE DAY

"It ought to be solemnized with Pomp and Parade, with Shews, Games, Sports, Guns, Bells, Bonfires and Illuminations from one End of this Continent to the other from this Time forward forever more."

—John Adams, 1776

INTENTIONALLY DEFECTIVE GRANTOR TRUST (IDGT)

Recent discussions and concerns about the IRS and Presidential budget proposals attacking this technique have put the IDGT at the top of the list for high net worth and ultra-high net worth clients. Now is the time to address the 800 pound gorilla.

An IDGT sale is structured to produce a completed gift for transfer tax purposes with no income tax consequences. A summary of the basic mechanics of the sale is as follows:

OVERVIEW:

(1) The grantor creates an irrevocable grantor trust for the benefit of his or her descendants.

(2) The grantor retains enough control over the trust to make it a grantor trust for income tax purposes, but not so much control that the trust assets are included in the grantor's gross estate.

(3) The grantor sells assets to the trust and takes back a note.

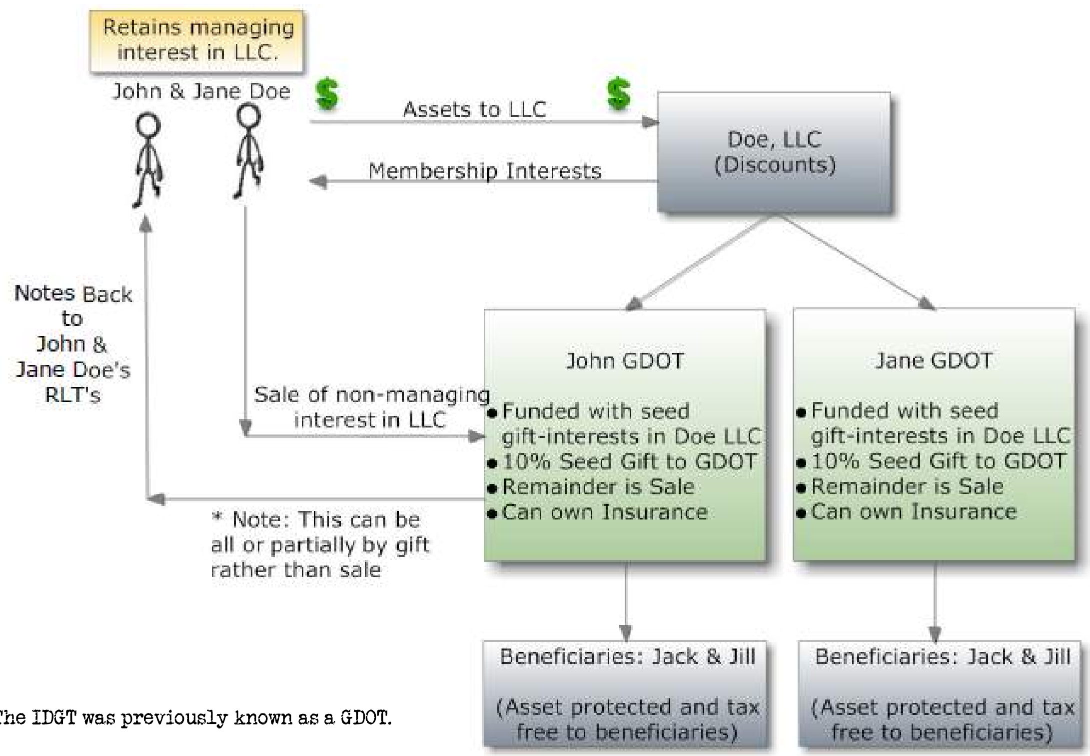
(4) The interest rate on the note is set at the lowest rate allowable under the tax law (AFR).

(5) The assets sold to the trust are expected to produce a total return substantially in excess of the Code Section 7520 rate.

(6) The sale price is set equal to the FMV of the assets sold so there is no taxable gift.

(7) The assets sold to the IDGT are typically assets that qualify for valuation discounts, like FLP interests.

(8) If the purchaser is a dynasty trust, the grantor allocates generation-skipping transfer tax exemption to the trust to cover the amount of the seed money gift.



NOTE: The IDGT was previously known as a GDOT.

IDGT
(CONTINUED)

Wealth Transfer Tax Benefits

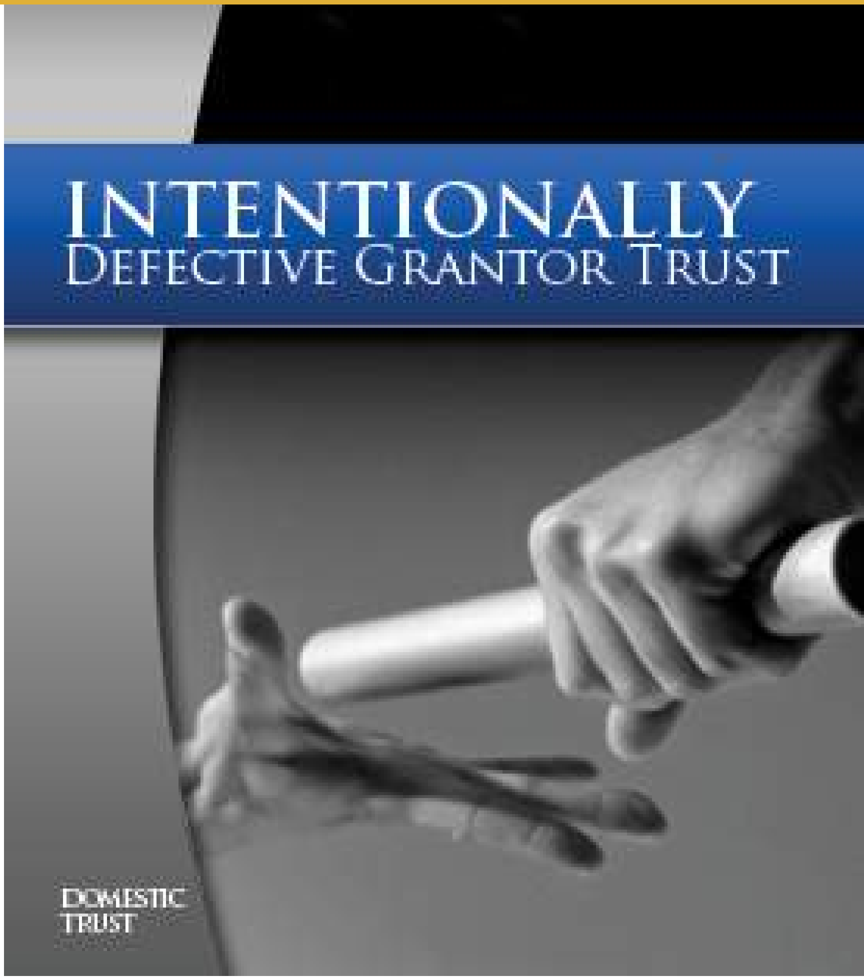
The value of the assets transferred by the grantor exceeds the value of the assets returning to the grantor's estate, producing important estate planning benefits.

1) IF THE TOTAL RETURN ON THE ASSETS SOLD TO THE TRUST EXCEEDS THE INTEREST RATE ON THE NOTE, ASSETS ARE TRANSFERRED TAX-FREE TO THE TRUST BENEFICIARIES.

2) PAYMENT OF THE TRUST'S INCOME TAX LIABILITY BY THE GRANTOR INCREASES THE AMOUNT OF THE TAX-FREE TRANSFER.

3) THE TRANSFER TAX BENEFIT IS FURTHER INCREASED BY VALUATION DISCOUNTS.

4) IF THE TRUST IS PROPERLY STRUCTURED, NONE OF THE ASSETS ARE INCLUDED IN THE GRANTOR'S GROSS ESTATE.



Income Tax Benefits

Because the buyer is a grantor trust, the IRS treats the seller and the trust as the same taxpayer for income tax purposes. As a result of grantor trust status, the grantor:

1) RECOGNIZES NO GAIN OR LOSS ON THE SALE;

2) IS NOT TAXED ON THE INTEREST PAYMENTS RECEIVED FROM THE TRUST;

3) RECOGNIZES NO CAPITAL GAIN IF NOTE PAYMENTS ARE MADE IN KIND; AND

4) MAKES THE TRUST AN ELIGIBLE S CORPORATION SHAREHOLDER.

THE ANDERSEN FIRM'S AV PREEMINENT RATING

Martindale-Hubbell® Peer Review Ratings™ are the gold standard in attorney ratings, and have been for more than a century. Peer Review Ratings™ identify lawyers with the highest ethical standards and professional ability. Financial Advisors or other Attorneys looking to refer a client, as well as individuals researching lawyers for their own legal needs, use these ratings to identify, evaluate and select the most appropriate lawyer for their legal issue.

The Andersen Firm's William E. Andersen has received the prestigious AV Preeminent rating from the attorney rating site Martindale-Hubbell.

The "AV Preeminent" rating is awarded to less than five percent of all attorneys across the United States, and is the highest rating offered by the Martindale-Hubbell Law Directory.

The Legal Ability Rating indicates professional ability in a specific area of practice and is based on five key areas: legal knowledge, analytical capabilities, judgment, communication ability, and legal experience.

The General Ethical Standards Rating denotes adherence to professional standards of conduct and ethics, reliability, diligence, and other criteria relevant to the discharge of professional responsibilities.

The AV Preeminent rating is a nationally-recognized acknowledgement of Bill's accomplishments and skills as an attorney and places him among the elite practitioners in the country.

Bill began practicing law in 1984 and founded The Andersen Firm in 1991. Bill graduated from the United States Military Academy at West Point. After his military service, he earned his J.D. at Vanderbilt University School of Law and later received his LL.M. in Estate Planning at the University Of Miami School of Law.

Bil is a member of the New York City Bar Association, Wealth Counsel, Union League Club of NYC, and National Network of Estate Planning Attorneys. He has been admitted to the New York, Florida, District of Columbia and Tennessee Bars as well as the Supreme Court of the United States. Additionally, he has been appointed as an Accredited Estate Planner with the National Association of Estate Planners & Councils and serves on The American Museum of Fly Fishing Board of Trustees and The Bonefish and Tarpon Trust Board of Directors.

Bill along with his partner Joleen Searles authored The Pocket Guide to Trusts and Estates: Understanding Estate Planning, Estate Settlement, Estate Litigation and Asset Protection.

We are pleased to announce that The Andersen Firm has the highest rating of AV Preeminent for 2016.

We look forward to providing the highest level of professional excellence for you and your clients.

ATTORNEYS AT LAW
THE ANDERSEN FIRM
A PROFESSIONAL CORPORATION

Martindale-Hubbell®
AV PREEMINENT®
Peer Rated for Highest Level of Professional Excellence
2016

Strong Opportunity Exists for Wealth Managers to Gain More HNWI Assets

***Source: World Wealth Report 2016**

In the first quarter of 2016 Capgemini surveyed 5,200 HNWIs (those having invest-able assets of $1 million or more) in 23 countries as well as more than 800 wealth managers and recently published the Capgemini's World Wealth Report. The reports provide insight into HNW attitudes and point out major opportunities for progressive thinking advisors. For the full report visit www.worldwealthreport.com.

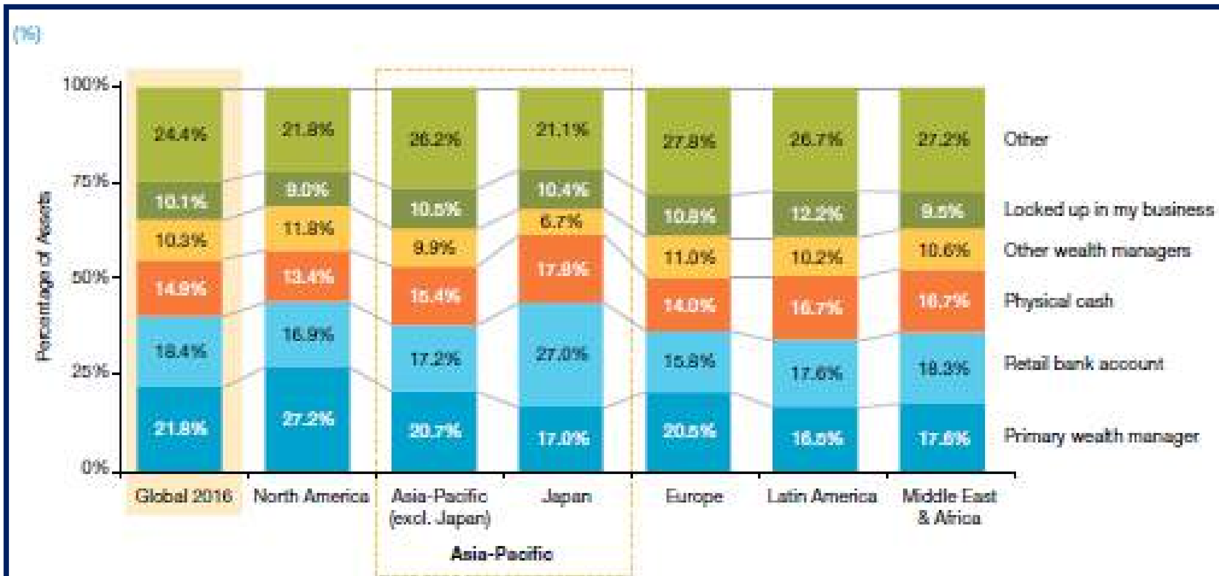
Significant Liquid HNWI Wealth is UP FOR GRABS

The report shows that wealth managers oversee less than one-third or 32.1% of global HNWI wealth, while primary wealth managers handle even less (21.8%). Some of the remainder of HNWI wealth is tied up in a variety of illiquid assets such as real estate and business. Shockingly, more than one-third of that total is actually liquid and available to wealth managers. A large portion (18.4%) of this wealth is nesting in retail bank accounts, while another hunk (14.9%) is actually in physical cash form.

Younger (under 40) HNWIs show favor to bank accounts and cash over wealth managers and they have more assets tied up in businesses. This leads to a much lower amount of wealth being overseen by the wealth manager than those over 60 . (Under 40 = 27.5%; over 60 = 42.2%) This trend can peril the wealth management industry if it persists.

These numbers are simultaneously a good indication of the performance of a large number of individual wealth managers and represents a great opportunity for those who are willing to do more. According to the study, a road map to future success for these willing advisors is to highlight the holistic planning advantages a wealth manager can offer, while also embracing the convenience of the digital realm.

Breakdown of HNWI Investable Wealth across Entities and Accounts by Region, Q1, 2016

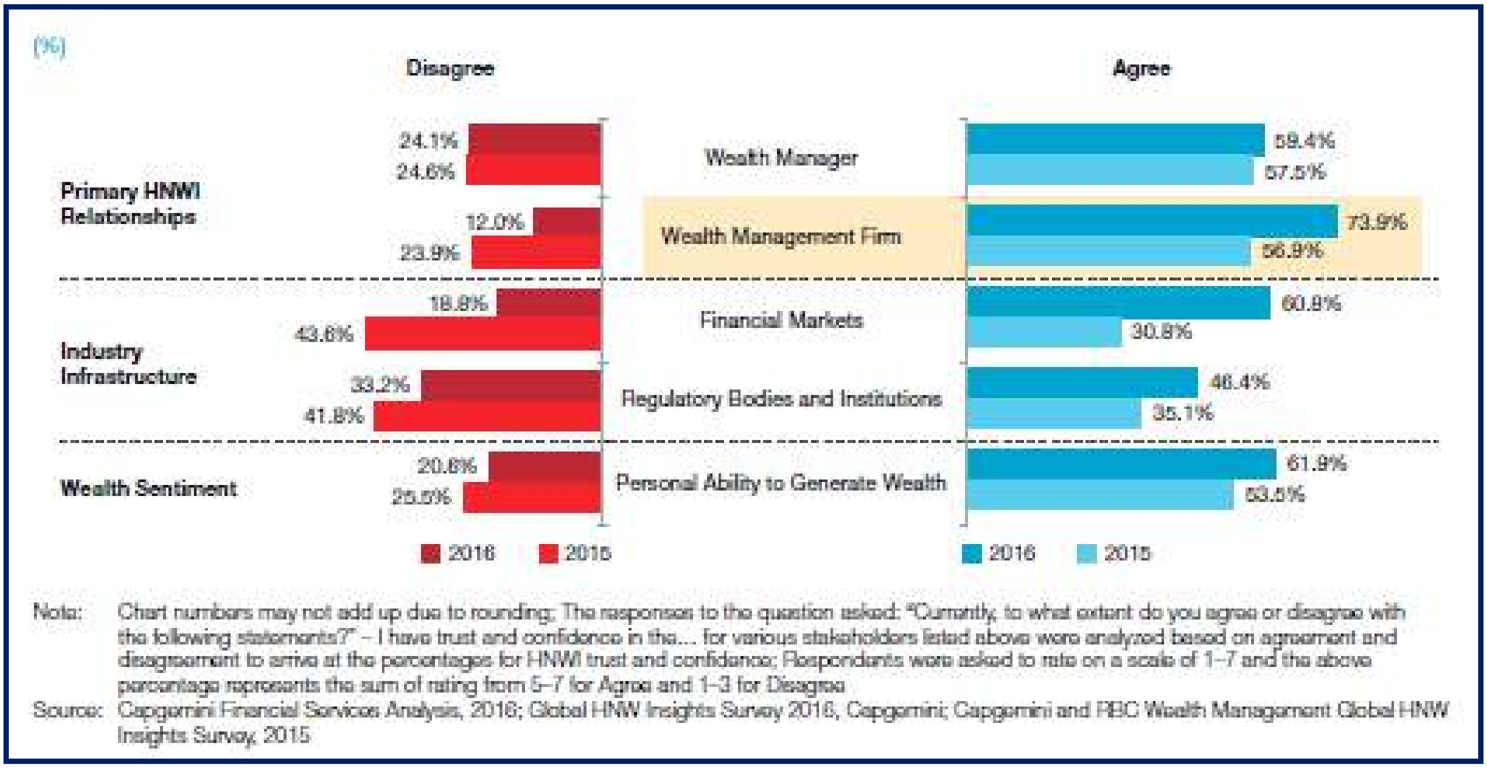


Note: Question asked: "How does your investable wealth breakdown across entities and accounts?"; Chart numbers may not add up to 100% due to rounding; Real estate is included as a part of Other
Source: Capgemini Financial Services Analysis, 2016; Global HNW Insights Survey 2016, Capgemini

Trust and Confidence in Firms

According to the report, in the past 12 months, high net worth trust and confidence in wealth management firms increased 17 percent, to 73.9 percent overall. The jump in trust for firms underscores the commendable job they are doing in building relationships with clients. HNWI trust in wealth managers, however, increased only by 1.9 percentage points, indicating that wealth managers are under pressure to deliver value to their clients.

Trust & Confidence in Key Stakeholders, Q1, 2015, 2016



Open to Consolidating Wealth with Wealth Managers

HNWIs say they are willing to consolidate more of thier wealth with wealth managers, but keeping satisfaction levels high is critical. Happy or satisfied HNWIs are much more likely to move assets to their primary wealth manager (68.1%), especially compared to those who are dissatisfied (20.7%).

For those under 40, nearly two-thirds (63.1%) say they may consolidate their assets under a manager. They may see this consolidation as a valid way to achieve their goals of simplifying relationships with wealth managers.

COMMENTS: Do you have 100% of all of your client's assets? During the estate planning process we insist that the client disclose all assets to assure they are properly funded into their trusts. This allows us to recommend consolidation of assets to one financial advisor.

If you have clients that could benefit from a complimentary estate plan review, please contact our office at **866.230.2206** to organize a time that works for you and your clients .

In 1916, as World War I raged in Europe, Congress wanted to boost U.S. revenues in case America joined the fighting, so lawmakers voted for a new tax on a person's assets at death. This levy affected fewer than 1% of Americans who died and raised less than 1% of federal revenue in 1917.

So began the modern U.S. estate tax. Today, the tax comes in the form of owing the government up to 40% of your assets at death, above an exemption of $5.45 million per person. Married couples can shelter close to $11 million from the federal estate tax and more if annual gifting is used.

New York has its own estate tax with an exemption lower than the federal exemption. The current New York exemption is $4,187,500 and will rise to $5,250,000 on April 1, 2017. Unlike the federal exemption, however, a married couple cannot double the New York exemption without significant careful planning. The federal tax allows for the so-called "portability" of a deceased spouse's exemption which makes it simple to add it to the surviving spouse's exemption. New York does not have a portability mechanism in its tax law. Therefore, estate tax planning for New York residents should carefully consider the use of marital trusts and disclaimer trusts to address this problem. If a person has an estate which might be large enough to trigger an estate tax, it is important to examine ways to minimize or avoid the tax through smart planning.

Today, due to high and rising Federal and State exemptions, most Americans (roughly 98%) will not be subject to estate taxes. (In 2015, estate tax revenues made up 0.6 percent of total federal receipts.) Of course, this could change very drastically depending on who is elected in November.

It is important to remember that today estate planning far exceeds taxes. It is inclusive of countless important and very personal decisions that will impact you while you're alive and your heirs after you're gone.

- *Who will make medical and financial decisions for you in the event that you become mentally or physically incapacitated?*
- *To whom do you want which of your assets distributed to…and how and when do you want them distributed?*
- *Who will take care of and make decisions regarding your children if you're unable or die unexpectedly?*
- *How will your special needs child be provided for?*
- *How can you protect your loved ones from the stress of probate?*

COMMENTS: If you have clients that could benefit from a complimentary estate plan review, please contact our office at **866.230.2206** to organize a time that works for you and your clients .

The Andersen Firm Areas of Practice

Estate Planning

- At The Andersen Firm we have planned for a vast array of estates ranging in size from a few hundred thousand dollars to a hundred million dollars and up, all the while realizing each specific case is different and requires specialized attention.

Estate Settlement

- The process of settling an estate can be difficult and emotionally painful for the family and loved ones of the deceased. It is our goal at The Andersen Firm to ensure that the process be handled with compassion, expedience, professionalism, and expertise, while protecting the rights of all parties involved. If the circumstances surrounding a client's estate require probate, our attorneys offer extensive experience in handling the processes and legalities involved.

Estate Litigation

- Our lawyers are not only skilled at handling cases involving estate and trust disputes, they draw on a thorough knowledge base of the specific procedures surrounding these issues. The Andersen Firm can efficiently take each case through to completion realizing that full blown litigation often can be avoided if we work diligently to come to resolution.

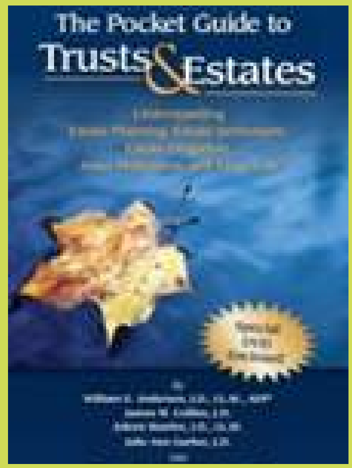
Attorneys at The Andersen Firm represent beneficiaries, trustees and personal representatives in various jurisdictions dealing with estate litigation and probate litigation matters. A Will contest challenges the admission of a Will to probate or seeks to revoke the probate of a Will that is already pending before the probate court. A similar type of estate litigation can take place contesting the terms of a trust. The most common causes of action in both Will contests and estate litigation can be found at www.TheAndersenFirm.com or call us at 866.230.2206.

Asset Protection

- For some, putting an Asset Protection Plan in place is advisable in order to attempt to remove the economic incentive to be sued and also to try and increase the ability to force an early settlement in the event a suit is filed.

The Pocket Guide to Trusts and Estates

Bill Andersen and Joleen Searles with Erin Turner and Jerry Saresky have released their collaborative book ***The Pocket Guide to Trusts & Estates: Understanding Estate Planning, Estate Settlement, Estate Litigation, Asset Protection and Elder Law***.



COMMENTS: If you have questions about The Andersen Firm's practice areas, need assistance with continuing education, client seminars, would like to request a copy of The Pocket Guide, or have a question or suggestion about our website, **Angela Hooper** is our **Director of Professional Alliances.** and is available to assist you. Angela welcomes your calls and may be reached at 866.230.2206 or by email at AHooper@TheAndersenFirm.com.