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**30 YEARS OF
STEP**

**CELEBRATING THREE DECADES
AT THE FOREFRONT OF TRUSTS AND
ESTATES PRACTICE**

The changes that defined a generation

AS STEP TURNS 30, HELEN SWIRE LOOKS BACK AT MAJOR CHANGES IN THE WORLD OF TRUSTS AND ESTATE PLANNING OVER THE PAST THREE DECADES

The word ‘unprecedented’ has been used consistently over 2020 and 2021, as the world deals with the ongoing COVID-19 pandemic. Although this has been an all-consuming topic of conversation, it is far from the only significant change that has impacted on financial services since the birth of STEP in 1991.

The Society has existed through numerous major global events, during a time when internet provision has skyrocketed from a dial-up connection for the select few to being accessible in the pockets of the majority. Even the largest-scale events have affected practitioners and clients: whether in the shape of changes to the global economy and increased international mobility, or in terms of the role of women in family businesses and appetites for philanthropy and social or scientific investment.

Within the trusts and estates industry itself, practitioners have seen swathes of change across their work, from technological advances and regulatory requirements to increased longevity leading to more generations managing family wealth.

STEP’s recent report, *Social and Economic Benefits of Trusts*,¹ noted how some of these changes have impacted on trusts in particular. ‘The role of family trusts has become more pronounced due to shifts in societal and familial trends,’ the report found. ‘Globalisation has arguably led to an increase in globally dispersed families and their assets, who use trusts to help manage their finances responsibly. It is far more common now for families to live in, and own properties in, a number of different countries.’

The numerous societal and familial developments in the course of the past

three decades have seen STEP evolve continuously to meet the needs of practitioners, from setting up special interest groups (SIGs) specially focused on keeping up with the developing landscape to launching new branches in jurisdictions where the trusts and estates industry remains nascent.

A SHIFT IN MOBILITY

Looking back at the shifts that have occurred in this time, experts note that country and jurisdiction boundaries have become increasingly blurred: ‘Clients have become more selective in where they operate, but within that framework are increasingly mobile,’ says David Russell TEP, Chair of the STEP International Client SIG from 2016–2017.²

‘We are all cross-borderers now,’ agrees Richard Frimston TEP, Founder of the STEP Cross-Border Estates SIG.³ ‘The idea that clients can create offshore structures and ignore the effects in other jurisdictions is long gone. More and more clients have cross-border issues, family across borders or assets across borders.’

He points to the UK’s general abolition of exchange controls in 1979, which meant an increasing movement of capital and people, and notes that the UK’s exit from the EU has also led clients to focus on a need to protect themselves and their assets through holding a number of nationalities as rights to reside change.

‘The idea that clients can create offshore structures and ignore the effects in other jurisdictions is long gone’

Richard Frimston TEP



With this mobility, there came an increasing compliance burden for practitioners and clients alike. Ensuring that individuals and companies operating in multiple jurisdictions are paying fair tax – to the right governments – has become a key part of the transparency agenda driven forward over the past few decades.





Over the years, numerous countries have implemented 'blacklists' of jurisdictions that they consider to be low-tax, uncooperative in the exchange of information or that fail to sufficiently prevent tax evasion or adequately protect against money laundering and the financing of terrorism. Many now also have registers of beneficial ownership information for companies and trusts.

In addition, independent international bodies have also stepped up their monitoring of the movement of assets. Such bodies include the global Financial Action Task Force, set up in 1989; the Asia/Pacific Group on Money Laundering, set up in 1997; the EU's Economic and Financial Affairs Council and MONEYVAL, also formed

in 1997; and the OECD's Global Forum on Transparency and Exchange of Information for Tax Purposes, launched in 2009.

"The matrix of reporting requirements for clients on local, regional and international levels is incredibly complex and the implications of non-compliance can vary widely," says Cindy Radu TEP, Co-Chair of the STEP Business Families SIG.⁴ "It is critical for practitioners and business families to be in regular communication to keep on top of increasing regulatory changes. Being informed alone is no longer sufficient to manage increased compliance burdens: it is essential to have systems, protocols and oversight in place."

'The next generation is bringing innovation and new ideas and developing a more holistic approach combining charitable giving and sustainable investments'



Julie Wynne TEP

THE NEXT GENERATION

In terms of business families, practitioners have not merely had to contend with increased global mobility and the compliance and governance burdens that brings. Radu points to the fact that increased longevity internationally has many important implications for clients.

Although not as dramatic as in the first half of the 20th century, life expectancy figures continue to grow steadily year-on-year. Data from the World Bank⁵ shows that between 1991 and 2016, life expectancy increased by 3.3 years in the US, 4.9 years in Argentina and the UK, 5.3 years in Australia and 6.9 years in China.

The consequence is a growing number of generations of adults within family businesses, each with their own challenges, expectations and priorities.

"This heightens the need for good governance in the business, ownership and family systems," says Radu. "It is essential that someone on the advisory team represents the family and various multi-generational perspectives. Financial plans and risk-management strategies must anticipate longer life expectancies, desired lifestyle and the implications of a decline in mental and physical capacity."

A major element of change, spurred on by these younger generations emerging as clients, is an increased focus on social responsibility, philanthropy and charitable giving.

Julie Wynne TEP, Chair of the STEP Philanthropy Advisors SIG,⁶ comments: "A new generation of mega-givers has emerged and challenged the traditional way of philanthropy. Nowadays,



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Cindy Radu TEP



philanthropists not only give through their charitable foundation, but also try to bring their values and the search for impact into their company as well as into their investments. The next generation is bringing innovation and new ideas and developing a more holistic approach combining charitable giving and sustainable investments.’

The changes over the past 30 years in the philanthropy space have, Wynne says, been profound, with philanthropic giving evolving into new forms such as venture philanthropy, blended finance, crowdfunding and hybrid structures. As the lines between philanthropy and sustainable economy grow increasingly blurred, existing rules governing charitable organisations have become increasingly archaic and philanthropy advisors have had to evolve accordingly.

‘The infrastructure serving the philanthropic sector has developed quickly,’ she notes. ‘There has been a strong growth among philanthropy advisors and companies acting as a bridge between non-profit organisations and the philanthropists who want to be assisted in their giving journey to make the most impact.’

A new trend noted by philanthropy advisors is increased ‘planned giving’, that is to say through testamentary bequests: giving pledges, charitable giving in wills and the establishment of family charitable foundations.

ESTATE PLANNING AND THE RISE OF TECH

Of course, contentious trusts and estates practitioners have remained consistently busy since the inception of STEP in 1991. To support the ever-evolving needs of clients, jurisdictions globally have seen numerous procedural changes and significant amendments to trust law, especially as concerns firewall legislation, says Toby Graham TEP, Chair of the STEP Contentious Trusts and Estates SIG from 2013–2018.⁷

The meteoric rise of technology in the intervening decades, further accelerated by COVID-19, as practitioners have been forced to distance from clients, has significantly expanded estate-planning practice.

Worldwide, the pandemic has forced emergency legislation changing the formalities around witnessing of wills and other such documents, such as powers of attorney, deeds, divorces and real estate transactions. Many countries are now considering elements such as witnessing or even signing via audio-visual means as a permanent measure.⁸

However, Graham says that these ‘more relaxed’ formalities around witnessing will ‘inevitably’ lead to some disputes, a sentiment supported by the current Chair of the Contentious Trusts and Estates SIG, Paula Myers TEP.⁹ ‘Those cases where we discover what or who is behind the camera have yet to surface,’ she warns. ‘We also consider that there will be an increase in homemade wills, more financial abuse claims and potentially more undue influence claims. However, these will take time to become a full-blown dispute and so the impact will continue to unfold over the coming years.’

Nevertheless, Graham remains positive about this newest trend: ‘It might encourage governments and practitioners to be more adventurous in terms of how technology can assist with will-making, having had to engage with a digital revolution during the pandemic.’

THE EVOLUTION OF NEW ASSETS

This digital revolution has not just been in terms of the technology practitioners have at their disposal for creating documents and interacting with clients, but also in terms of the assets themselves held by clients.

Cryptocurrencies first surfaced in 2009 in the form of bitcoin, and the past decade has seen the increasing presence of digital assets, most particularly in the last five years. How these assets are treated in terms of their management as part of estates, reporting and regulation of such assets and their tax implications have raised numerous questions for governments and practitioners, with legislation only now starting to surface around the world.

Since 2019, Canada, the Cayman Islands, Cyprus, New Zealand, the UK and the US have been among those jurisdictions to bring crypto-assets under their regulatory umbrella for taxation and reporting purposes.

On a wider, non-jurisdictional basis, the EU has expanded its automatic exchange of information directive (*Council Directive (EU) 2021/514 of 22 March 2021, DAC7*) to include digital platform operators. The European Commission’s next amendments, under DAC8, are likely to mandate exchange of tax-relevant data for crypto-assets and e-money.

Meanwhile, the OECD is preparing to launch a consultation later in 2021 on improvements to the Common Reporting Standard (CRS), to take into account the rapid adoption of innovative financial products such as crypto-assets that were not widely used when the original version of the CRS was published in February 2014.

LIFE TO COME

With such advances in technology, the past 30 years have been a time of vast change for trust and estate practitioners internationally – as well as a time of great opportunity for the industry as a whole.

‘For members who were practising 30 years ago, access to computing power and the worldwide web was still in its early stages,’ points out Radu. ‘The law firm I practised at did not have desktop computers for lawyers or email 30 years ago. Cases were still noted up manually, dictaphones were still in use and fax machines were de rigueur. But for today’s young practitioners, the pace of change is likely a non-issue, or may even seem slow.’

As a single year has changed the face of how people work and interact the world round, it seems likely that more change is to come in an increasingly globalised society.

#BUSINESSPRACTICE #TECHNOLOGY #TRUSTS

¹ To read the report, visit www.step.org/thought-leadership-and-research ² David Russell TEP is on the STEP Governance Committee and is a Barrister at Outer Temple Chambers. ³ Richard Frimston TEP is on the STEP Council and the STEP England and Wales Regional Committee and is a Lawyer at Russell-Cooke Solicitors. ⁴ Cindy Radu TEP is on the STEP Canada Board of Directors and is Family Wealth Transition Advisor at Cindy Radu Advisory. ⁵ bit.ly/3eUURed ⁶ Julie Wynne TEP is an Attorney-at-Law and Partner at FRORIEP Legal SA. ⁷ Toby Graham TEP is a Partner at Farrer & Co. ⁸ For more information, visit STEP’s COVID-19 Technical Hub at www.step.org/about-step/covid-19-technical-hub ⁹ Paula Myers TEP is a Contentious Probate Solicitor at Irwin Mitchell.



Helen Swire
is News Editor
at STEP