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+ WEALTH WIZARD

Haute Living talks with Michael Kosnitzky, private wealth law partner, about the current climate in wealth management and his holistic philosophy.

BY **MARY GIBSON**

"MY FATHER, WHO WAS ONE OF THE MOST LIBERAL GUYS THE GOOD LORD EVER CREATED, IS PROBABLY turning over in his grave knowing that I made a profession out of protecting the billionaires of the world."

Michael Kosnitzky is cochair of the private wealth law practice group at Pillsbury, Winthrop, Shaw, Pittman LLP, a 153-year-old law firm that has represented the wealthy for generations. His primary role is to represent ultra-wealthy individuals, families and family offices and help them to properly assess risks and then mitigate those risks. He advises some of the world's most well-respected individuals, families and privately held businesses, using a holistic risk-assessment approach to the law.

"Paraphrasing F. Scott Fitzgerald, the rich are very different," Kosnitzky says. "They are a unique facet of our society that requires a completely different mindset in order to properly provide advice and counsel. They are often significantly affected by changes in government policies and will likely be very impacted by the tax law and other changes proposed by the Biden administration."

Here, he discusses the current administration and its policies' potential effects on his clients, how to choose the right private wealth lawyer, and his general philosophy about his practice.

Haute Living: What exactly does your job and practice entail?
Michael Kosnitzky: We deal with the ultra-wealthy — both generational and the newly wealthy — holistically as a practice area. Most law firms have a siloed approach: everyone is focused only on his or her specific area of knowledge. Of course, Pillsbury has all types of experts in its offices around the world, but the primary difference is how we deploy our expertise. We start with trying to understand and assess our clients' business, investment, charitable and personal goals and objectives and then offer thoughtful solutions to help them reasonably achieve these goals and objectives. These often-complicated solutions many times require a multidisciplinary approach to the law, and tax risks are but one risk to be considered in the analysis. In doing our assessment, we need to offer multiple solutions, and our solutions must consider the associated costs, complexity and risks.

But our most important job is to identify, assess, articulate and then mitigate risks of all kinds to our clients. These include income and estate tax risks, but they also include things like employee risks, civil and criminal litigation risks, creditor risks, divorce risks, general business risks, investment risks, securities law risks, reputational risks and many others. Private wealth lawyers who only focus on income and estate tax-related risks do a disservice to their clients, and this is why Pillsbury deploys a holistic and multidisciplinary approach to the ultra-wealthy. All of our attorneys, no matter their specific expertise, are tasked with being the first responder or general contractor to our clients.

HL: How do you feel the Biden administration has affected and will affect the ultra-wealthy?
MK: I've written and spoken quite extensively on this topic, and my comments are not limited to just income and estate tax matters or just to the Biden administration but rather the entire plethora of issues the wealthy will face in a changing political environment that seems dead set on demonizing them. We are seeing an extremely painful and unhealthy dynamic in the United States and around the world as it relates to the ultra-wealthy.

My clients can't even give their money away without being criticized for doing so. The criticism that Mark Zuckerberg received a few years ago and that Jeff Bezos recently received in a similar vein is, in my judgment, disgraceful. People who earned their money legally should be allowed to spend it as they choose. As I've already discussed, my primary strategic responsibility as an attorney who represents wealthy individuals and families is to identify, assess, articulate and then mitigate legal risks. I try to identify them before they occur so that my clients can mitigate the effects before they become a problem or before they get caught on, as I describe it, the "cusp of change."

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Michael Kosnitzky, Kamal Hotchandani and John Utendahl

Paraphrasing Wayne Gretzky, I try to know where the puck or in this case the law is going, not only where it is today. Under current law, you do not pay tax if you hold assets in a nontaxable vehicle or if you do not have a taxable event. So many of our strategies mitigate tax risks by creating vehicles that are not subject to current taxation, like certain types of insurance structures and qualified retirement plans, or create monetization transactions that don't involve a current taxable event, like certain types of borrowing and derivative transactions. The tax proposals recently released by the Biden administration already include things like a substantial increases in the corporate and individual income tax rates, the reduction of the capital gain versus ordinary income rate arbitrage, taxing promotes/profit interests at ordinary income rates if not held for five years, the permanent inability to freely deduct business expenses against capital gains and qualified dividends both in the year the business expenses are incurred and in future years if carried over, the elimination of the exclusion for qualified small business stock gains, the taxation of transfers to irrevocable grantor trusts and the inclusion of assets held in such trusts in the grantor's estate at death, a reduction by about half of the estate tax basic exclusion amount, and elimination of estate tax valuation discounts for nonbusiness assets, among others. It is not clear whether any or all of these provisions will become law, and if they do, whether they might be retroactive to 2021 rather than prospective and applying in 2022, though the 5 percent capital gain rate increase and the elimination of the exclusion for qualified small business stock are specifically stated as being retroactive to September 13, 2021. Perhaps we should look at this as the glass being half full rather than half empty, because of the things that are not in Biden's proposal that could have been, like a wealth tax, market-to-market taxation, the complete elimination of the estate tax unified credit, the taxation of gains at death or the elimination of the step up in basis at death, the elimination of bonus depreciation for private aircraft and the application of the 12.4 percent Social Security tax to income above $400.000.

HL: What should be considered when choosing a private wealth lawyer?
MK: The ultra-wealthy rightfully demand responsiveness and are accustomed to getting their way. They also sometimes surround themselves with people who tell them what they want to hear. An experienced and competent private wealth lawyer must not tell a client what he or she wants to hear, but rather what he or she needs to know. These are sometimes difficult conversations, but they are necessary nonetheless. There is certainly no "right" lawyer for all situations, but finding a private wealth lawyer who is very responsive, and a good listener and communicator, with the confidence to tell you what you need to know and who will not engage in groupthink is likely to be your best hire. A good private wealth lawyer should also help you identify and then limit your legal exposures and think and plan for the long term. We need to guide our clients not just where the law is now but where we believe it will be, and not allow them to be caught on the cusp of change. Unfortunately, the road is strewn with the ultra-wealthy who did not see change coming fast enough to correct future behaviors, or they reacted to their past behaviors far too late to mitigate the risks caused by them. HL