Advanced Estate Tax Planning Strategies

By

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August, 2024

1. **Introduction:**

    a. Who is this workshop for?

    b. Goal is to provide a survey of strategies – not technical legal dissertation

    c. Concepts are complex

        i. Stay on a high level

        ii. Focus on concepts

        iii. Repetition is the key to retention

        iv. How to eat an elephant

2. **The Estate Planning Pyramid**

    a. Advanced documents are written for the IRS

    b. Not intended to be "warm fuzzy documents"

    c. Many available strategies to eliminate federal estate tax

        i. Client goals, financial and family situations, etc. determine which strategy or combination of strategies are the appropriate ones

        ii. Advanced Planning Process – two options

            1. Standalone (i.e. implementing one particular strategy) without impact projections

            2. Comprehensive (i.e. implementing multiple strategies) with formal advanced planning design

a. Will require annual reviews

b. Building an A Team

iii. All start with an initial counseling meeting

iv. How much is enough?

v. What is the handprint I want to leave behind?

vi. Fees

3. Federal Estate Taxes

a. Everything tax

b. Tax rate is 40%

i. Prior tax rates went as high as 60%

c. Estate Tax Exclusion Amount (aka the Estate Tax Coupon)

i. 2024: $13.61MM

ii. Adjusted for inflation

iii. Tax Cuts and Jobs Act increased Coupon to $10M

iv. TCJA Expires at end of 2025 – revert back to $5M Coupon (but adjusted for inflation)

v. Required to file a 706 Federal Estate Tax Return if estate exceeds Coupon amount

d. Unlimited Marital Deduction

e. Charitable Deduction

4. Federal Gift Taxes

a. Annual Gift Tax Exclusion

i. $18,000/per donor/per beneficiary/per calendar year

ii. Indexed for inflation

b. Exceeding the Annual Gift Tax Exclusion Amount

i. Recipient does not pay a tax

ii. Donor deducts excess from Estate Tax Coupon

iii. Example

c. Claw back concerns

5. Gifting

a. Gift the asset and the basis (i.e. pick the asset carefully)

b. Appreciation is removed from the estate

c. Often utilizes both the annual gift tax exclusion and the lifetime estate tax coupon

d. Can be an outright gift (i.e. no protections over gifted assets) or a gift to a protected gifting trust

e. Gifts for education and medical purposes are not subject to annual gift tax exclusion amount

6. Irrevocable Life Insurance Trusts (ILITs)

a. Most common advanced planning strategy

b. Holds ownership of life insurance

c. Purpose of insurance?

d. Why life insurance and not securities?

e. Devil is in the details – it's ALL about the lifetime administration process

f. Strategy overview

7. **Donor Advised Funds (DAFs)/Family Foundations (FFs)**

    a. Provides funds for directed charitable purposes

    b. Minimal cost to create a DAF

    c. Flexibility to maximize charitable deduction the year the gift is made to the DAF – not the year the DAF distributes the funds to a charitable organization

    d. May appoint successor managers

        i. Facilitate transfer of charitable values to younger generations

    e. May be created during lifetime or after death

    f. May be funded during lifetime or after death

        i. Lifetime gifts can receive a charitable income tax deduction

        ii. Computational funding option

        iii. Often coupled with an ILIT as a wealth replacement trust

    g. Family Foundations

        i. More flexible than DAF's

        ii. Most common purposes:

            1. Actively engaged in running a charitable organization

            2. Can be used for scholarships, grants, donations.

8. **Testamentary Charitable Lead Annuity Trusts (TCLATs)**

    a. Designed to zero out estate taxes

    b. Funded after death (thus called Testamentary)

        i. Computational funding option

        ii. Specific dollar amount option

        iii. Does not require loss of access to assets during lifetime

iv. No charitable income tax deduction during lifetime

c. Strategy overview:

i. On death, some designated amount is transferred to the TLCAT;

ii. Tax planning is maximized by funding the TCLAT with assets subject to Federal Estate Tax;

iii. During the term of the trust (typically 20 – 25 years) income is paid to one or more charitable beneficiaries;

iv. Must pay out a minimum of 5%/year;

v. At the end of the term, remaining assets in the TCLAT are distributed to family members or other individual beneficiaries with no Federal Estate Tax.

d. Applicable Federal Rate issues may frustrate the effectiveness

e. Annual review is encouraged

f. Often coupled with an ILIT as a wealth replacement trust

9. Charitable Remainder Trusts (CRTs)

a. Can be created during lifetime or after death

b. Strategy overview:

i. A gift of appreciated assets (typically assets that are no longer performing well) are gifted to the Charitable Remainder Trust;

ii. No impact on Annual Gift Tax Exclusion or Estate Tax Coupon;

iii. CRT Trustee can liquidate the assets and re-invest them with no capital gains implication;

iv. Income stream is paid to the donor, or the donor and their spouse, or other family members for either a period of years or their remaining lifetimes;

1. Amount of income can be a fixed amount (i.e. annuity amount) which makes the trust a Charitable Remainder Annuity Trust;

2. Amount of income can be a fixed percentage of the principal (i.e. unitrust amount) which makes the trust a Charitable Remainder UniTrust.

v. Income to beneficiaries is income taxable;

vi. At end of term, remaining assets are distributed to one or more qualified charities named in the document;

1. Can include power for donor to change charitable beneficiaries;

2. Can include restrictions on the charity's use of the funds.

vii. Assets in the CRT are not counted in the donor's taxable estate;

viii. Often coupled with an ILIT as "Wealth Replacement Trust".

c. Popular planning strategy for beneficiary of IRA's and qualified retirement plans

i. SECURE Act replaced the stretch out option for inherited IRAs with 10 year rule

ii. RMD's each year with a requirement all funds be distributed no later than December 31st of the year containing the 10th year anniversary of the participant's death

10. Spousal Limited Access Trusts (SLATs)

a. Estate Freeze technique (moves the appreciation on an asset out of the estate)

b. Married clients only

c. Strategy overview:

i. Each spouse creates a SLAT for the benefit of the other spouse;

ii. Each spouse gifts their own assets to the SLAT for the benefit of the other spouse;

iii. The amount of the gift is often whatever Estate Tax Coupon the gifting spouse has available thus depleting their available Estate Tax Coupon on death;

iv. Neither the initial gift, nor any appreciation on that gift, are included in the gifting spouse's estate;

v. The beneficiary spouse has access to the assets for their benefit during their lifetime although ideally it is better for the beneficiary spouse to spend assets not inside the SLAT;

vi. The gifting spouse may incidentally benefit from the transfer of assets out of the SLAT to the beneficiary spouse;

vii. The gifting spouse remains responsible for paying all income taxes on income generated by the assets in the GRAT

d. Risks:

i. Gifting spouse may NOT be a trustee of the SLAT and thus give up control over those assets gifted to the SLAT

ii. No gifting of joint or community property assets

iii. Premature death of spouse

iv. Divorce

v. Reciprocal Trust Doctrine must be avoided to ensure assets in SLAT are not pulled back into their taxable estate

vi. No step up in basis on SLAT assets after death of beneficiary spouse

11. Grantor Retained Annuity Trusts (GRATs)

a. Estate Freeze technique (moves the appreciation on an asset out of the estate)

b. Useful if there is no remaining Estate Tax Coupon (i.e. it was used during lifetime)

c. Enables gifting without utilizing Annual Gift Tax or Lifetime Estate Tax Coupon

d. Strategy overview:

i. Assets are gifted to the GRAT (one time transfer) and held in trust for some term of years;

ii. During the term of the trust, the donor receives an annuity amount;

iii. No gift tax is determined based on the difference of the value of the amount gifted and the amount paid back by the annuity;

iv. Remaining assets pass to beneficiaries at the end of the term;

1. Assets pass at donors basis for capital gains taxes

2. No step up on death

v. The remainder of the trust assets (i.e. the appreciation) pass to beneficiaries free of federal estate tax SO LONG AS you outlive the term of the GRAT;

vi. Donor is responsible for paying income taxes on assets inside the trust

e. May be rolling or term certain

f. Risks:

i. Death before end of trust term;

ii. Under performance of trust assets

iii. Legislative

12. Conclusion

a. Client Response Form

i. Content

ii. Complexity

iii. Feedback on how to improve

iv. Next step – Counseling meeting

b. Thank you for coming!