Estate Planning Opportunities After Tax Reform

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Assisting Clients with Simplifying their Estate Plan

Many of your clients will fall into one of three categories: (1) they have a modest net worth but, a trust that was drafted before portability of a deceased spouse's unused exemption was available; (2) they have a net worth that flirted with the prior basic exclusion amount (5.49 million dollars per individual in 2017); or (3) they have a trust with a funding formula leaving their basic exclusion amount to a Family Trust before funding a Marital Trust.

In each of these events, your client's plan may be more complicated than it needs to be and may no longer reflect the client's estate planning goals in light of changed circumstances.

Now is the optimal time to revisit the plan to see if simplifying makes sense. In most cases, we can switch the funding formula to a "wait and see" approach which will postpone the decision making until the first spouse passes away. With this approach, we can determine at the most relevant moment - the time the first spouse passes - whether it is most advantageous to fund a Family Trust for estate tax purposes (to shield the assets within and any appreciation from estate taxation but not capital gains taxation) or to fund only a Marital Trust for income tax purposes (to allow the assets to receive a double step-up in basis at the first spouse's death and then again at the survivor's death).

Assisting Clients with Charitable Planning

It appears the latest tax reform removes many tax incentives for those who are more charitably inclined- the standard deduction has almost doubled. With less incentive to itemize deductions, many may move away from charitable giving as a tax strategy.

For those who are still charitably inclined, we expect to see an increase in the use of Donor Advised Funds. These funds allow the taxpayer to make one large contribution for a tax year, but let the benefits be spread out to the charity over time. By bunching contributions that would otherwise have been made over a longer period, the charitably inclined client can take full advantage of itemizing and taking advantage of the raised 60% percent-of-income limitation (up from 50%).

Assisting Clients Claim Full Exemption Amount (Portability under Rev. Proc. 2017-34)

The latest tax reform left unaltered a Rev. Proc. from earlier in 2017 that allows for the late filing for a Surviving Spouse to claim the deceased spouse's unused exemption amount. Generally, to claim a deceased spouse's unused exclusion amount (DSUE), a timely election must have been made by the executor on a properly filed 706 form nine months (or fifteen months with a timely filed extension) after the deceased spouse's date of death. For those who may have missed the window, the IRS has offered a sort of reprieve in Rev. Proc 2017-34. This ruling allows the executor to claim portability of the DSUE by filing a complete and properly prepared 706 on or before the ***LATER*** of: (1) January 2, 2018, or (2) the second annual anniversary of the decedent's date of death.

Assisting Widows/Widowers Who Are Considering Remarriage

Love is in the air, which is great, but do not let your love-struck client move too quickly. There are significant estate planning considerations to be made before tying the knot for the second time.

One consideration is how remarriage affects a taxpayer's ability to use a deceased spouse's unused exemption (DSUE) amount. If a surviving spouse claimed the DSUE and had yet to use it, it will be lost upon remarriage; however there are some advance planning techniques that may preserve the exemption.

Another consideration is whether a prenuptial agreement is advisable. Many trusts require that the surviving spouse sign a premarital agreement or step down as trustee over the marital or family trusts established after the deceased spouse's death. Prenuptial and postnuptial agreements are also important if the newlyweds want to leave each other out of their personal estate plans, which is common when these are adult children are all from a prior marriage. To effectively disinherit each other, they will need to make sure the estate plan is clear and each will need to waive statutory allowances under Virginia law, which could total as much as $64,000 plus one-half of the remaining estate.

Assisting Business Owners with Choice of Entity

Choice of business entity is often a tough choice for clients. While there are pros and cons with each, the latest tax legislation treats all entities more favorably.

C Corporations are now taxed with a flat rate of 21%, and the corporate alternative minimum tax has been eliminated.

Owners, including trust and estate owners, of pass-thru entities- partnerships, S Corps, LLCs, Virginia Business Trusts, and Sole Proprietorships- can now take advantage of §199A, which allows owners of certain entities (i.e. those not labeled as "specified service

businesses”) to deduct “qualified business income” on personal tax returns. This deduction is extended to Trust and Estate owners.

Assisting High Net Worth Clients Who Have used All or Most of Their Exemption

It is important for clients who have used all or most of their estate/gift tax exemption to consider ways they can take advantage of the raised exemption over the next seven years. There are a plethora of options depending on the client’s goals and objectives and with the exemption dropping back down in 2025, there is no better time to start planning.