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In our October article we discussed what estate planning entailed and the importance of a carefully drafted and properly executed Will in carrying out the testamentary objectives of the Testator while reducing or eliminating estate taxes (at estate tax rates up to 40%) and reducing estate administrative costs. We showed how it might be possible through timely implementation of estate planning strategies to owe zero estate taxes on a \$50 million estate.

We discussed the unified credit equivalent of \$5.43 million per spouse that allows with proper planning for a couple to shelter up to \$10.86 million from estate taxes by using their combined unified credits. We also mentioned the portability feature of the unified credit that can allow a surviving spouse to utilize the unused unified credit of a decedent spouse so that the unused unified credit is not wasted.

We explored basic concepts of reducing the size of the taxable estate by gifting property to family members, to qualified charities and to others. This included a discussion of annual exclusion gifting of \$14,000 per year to any person and that this annual exclusion amount can be doubled to \$28,000 per year per child, grandchild or other person by joint spousal gifting. We also mentioned that gifts to pay tuition or medical expenses of others are without limit provided certain requirements are followed.

We mentioned the use of valuation discounts as a method for reducing the reportable value of the estate and thereby achieve significant estate tax savings. We discussed how valuation discounts might be implemented through the use of a family partnerships or family corporation.

Several strategies were named, but not explained, thereby hinting at various estate planning techniques that might be utilized. This includes, but is not limited to various Grantor trusts, irrevocable life insurance trusts, revocable and irrevocable trusts, testamentary trusts, various charitable trusts, Dynasty trusts, Qualified Personal Residence Trust, life insurance and annuity contracts, pension and retirement plans, deferred compensation arrangements, and other agreements.

One key concept not discussed earlier should be mentioned. That is the use of the marital deduction. The estate and gift tax law allows for an unlimited marital deduction for US citizens. This means that one spouse can gift to the other spouse an unlimited amount of property without estate or gift taxes so long as the transfer of property to the other spouse is in a form that qualifies for the marital deduction.

What this means is that no matter how large your estate is, you can arrange your affairs so that on the death of the first spouse to die, there is no estate or gift tax due. Typically this is done by coordinated use of the marital deduction with the unified credits of each spouse.

For example, assume the case of a \$50 million estate. Through estate planning both spouses have used their unified credits to leave \$10.86 million to children and other family members outright or in trust. The balance of the estate, approximately \$39 million can be left to the surviving spouse outright or in a form that qualifies for the marital deduction such a qualified marital deduction trust.

In this example there is no estate tax due on the death of the first spouse to die. The estate tax is deferred until the death of the surviving spouse.

A key principle of tax planning is that a tax that is deferred is a tax that might never have to be paid. This means that it is often desirable to defer a tax for as long as possible. The marital deduction allows you to defer the estate tax that might otherwise be due but for the marital deduction.

During the lifetime of the surviving spouse gifting to other family members can continue under the annual exclusion provision and gifts to charity can also be continued. Over time large amounts of property can be removed from the taxable estate.

It is also possible that at some future time the estate tax may be repealed. Proposals have repeatedly been presented to Congress to repeal the estate tax. In fact, the estate tax was repealed for one year in 2010, but changes in the estate tax law reinstated the estate tax for subsequent years.

It is also possible that the unified credit may expand over time or other provisions may allow for additional assets to escape estate taxes. On the other hand it is also possible that over time estate and gift tax law may become more burdensome and such taxes might increase over time. Still, it is generally preferable to defer a tax when possible.

In summary, here are some recommendations regarding estate planning for large estates:

1. Make sure you have a Will that is up to date and prepared by a competent and experienced attorney. This is a foundational step and its importance can't be stressed too much.
2. Stay healthy. Health buys you time, and the more time you have, the greater the opportunity to transfer estate assets to other family members and to charity.
3. Consider how to best utilize your unified credit equivalent of \$5.43 million and the \$5.43 million unified credit of your spouse if applicable, to shelter unified credit assets from estate taxes.
4. Consider how to best utilize the unlimited marital deduction to gift assets outright or in qualifying trust to a spouse.
5. Implement an annual exclusion gift program to transfer \$14,000 per year per person (\$28,000 per year with spousal gifting) to children, grandchildren and others outright or in qualifying trust. Remember that qualifying gifts for tuition and medical expenses are unlimited.
6. Evaluate the use and feasibility of various trusts given your facts and objectives, including but not limited to Grantor trusts, irrevocable life insurance trusts, revocable and irrevocable trusts, testamentary trusts, various charitable trusts, Dynasty trusts, Qualified Personal Residence Trust and other trusts.
7. Consider how you might use valuation discounts to reduce the reported value of estate assets. Evaluate the use of a family partnership or family corporation.
8. Determine what role gifts to charity will play in your estate planning. Qualifying gifts to charity are not subject to estate taxes. Evaluate the use of a family foundation or other charitable entity as part of your estate planning.

Let us briefly revisit the person with the \$50 million estate. His potential estate taxes and other estate costs (with a top estate tax rate of 40%) were estimated at \$16 million to \$20 million. With estate planning he and his spouse were able to use their unified credit equivalents to shelter \$10.86 million from estate taxes. Over time they were able to gift an additional \$20 million to family members using an annual exclusion gifting program, paying for tuition

and medical expenses of family members, and using valuation discounts applicable to family partnerships and family corporations. They also established various trust that made sense given their facts and objectives, including marital deduction trusts to defer estate taxes for as long as possible. They decided that about \$31 million (unified credit of almost \$11 million and additional gifts to family totaling \$20 million) was enough to leave to their children, grandchildren and other family members and that whatever they had over that amount would ultimately go to charity. They established a family foundation with the hope that their children and other family members might carry on the legacy of values learned from them. At the death of the last surviving spouse the estate was valued at \$20 million and that sum was transferred without estate tax to the family foundation. Zero estate taxes were paid. The net result was that the family received about \$31 million, the family foundation received \$20 million, and the IRS received zero.

The above is only an example. It is not meant to be specific estate planning advice. Each person and family has different facts and circumstances and may have different estate objectives. If you have a large estate and would like counsel on how to accomplish your estate objectives and save on estate taxes please call our office and set up an appointment. We will be glad to talk with you regarding your estate planning needs.

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