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2024 Year-End Estate Planning: Important Planning Considerations for 2024 and 2025

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The "big ticket" item of the Tax Cuts and Jobs Act (TCJA) is the significant increase to the lifetime gift, estate and generation-skipping tax (GST) tax exemptions. Under the TCJA, the exemptions were increased from $5 million (adjusted for inflation) to $10 million (adjusted for inflation). In 2024, these amounts are $13.61 million and in 2025, are $13.99 million. *Absent any changes in the law*, the increased exemptions under the TCJA are set to "sunset" (expire) as of January 1, 2026, back to $5 million. With inflation adjustments, it is anticipated that, after sunset, the exemptions will be in the range of $7 million in 2026, meaning individuals who do not use any of the exemptions prior to the sunset will lose nearly $7 million in their lifetime gift exemption and married coupled will lose nearly $14 million in lifetime gift exemption. What follows are several planning ideas to consider prior to the sunset.

Year-End Checklist for 2024

First, before going into greater detail on available strategies, here is a short checklist of easy-to-implement estate planning strategies that can be utilized prior to the end of 2024:

- Make year-end annual exclusion gifts of $18,000 ($36,000 for married couples).
- Make year-end individual retirement account (IRA) contributions.
- Create 529 Plan accounts before year-end for children and grandchildren, and consider front-loading the accounts with five years' worth of annual exclusion gifts, taking into account any gifts made during the year to children and grandchildren.
- Pay tuition and non-reimbursable medical expenses directly to the school or medical provider.
- Consider making charitable gifts (including charitable IRA rollovers) before year-end to use the deduction on your 2024 income tax return.

Review Formula Bequests

Many estate plans utilize "formula clauses" that divide assets upon the death of the first spouse between a "credit shelter trust," which utilizes the client's remaining federal estate tax exemption amount, and a "marital trust," which qualifies for the federal estate tax marital deduction and postpones the payment of federal estate taxes on the assets held in the marital trust until the death of the surviving spouse. While the surviving spouse is the only permissible beneficiary of the marital trust, the credit shelter trust may have a different class of beneficiaries, such as children from a prior marriage. With the TCJA's increase in the exemption amounts, an existing formula clause could potentially fund the credit shelter trust with up to the full federal exemption amount of $13.61 million in 2024 and $13.99 million in 2025. This formula could potentially result in a smaller bequest to the marital trust for the benefit of the surviving spouse than was intended or even no bequest for the surviving spouse at all.

There are many other examples of plans that leave the exemption amount and the balance of the assets to different beneficiaries. Depending on the class of beneficiaries of the credit shelter trust, if the taxpayer lives in a state where the federal and state exemption amounts are decoupled, the taxpayer's estate may inadvertently find itself subject to estate tax at the state level. Taxpayers should review any existing formula clauses in their current estate plans to ensure they are still appropriate, given the increase in the federal exemption amounts and the implications of the potential sunset of these exemption amounts. In addition, taxpayers should consider alternative drafting strategies, such as disclaimers, to maintain flexibility in their plans.

Income Tax Basis Planning

Taxpayers should consider the potential tradeoffs of utilizing the increased exemption amounts during their lifetimes to gift assets to others, as opposed to retaining appreciated assets until their death so that those assets receive a stepped-up income tax basis. Taxpayers may want to consider retaining low-basis assets, which would then be included in their taxable estates and receive a step-up in income tax basis, while prioritizing high-income tax basis assets for potential lifetime gift transactions. In addition, if a trust beneficiary has unused federal estate tax exemption, consideration should be given to strategies that would lead to low-income tax basis assets currently held in trust, and otherwise not includible in a beneficiary's taxable estate, being included in the beneficiary's taxable estate, such as:

- granting the beneficiary a general power of appointment over the trust assets;
- utilizing the trust's distribution provisions to distribute assets directly to the beneficiary, so that the assets may obtain a step-up in basis upon the death of the beneficiary to whom it was distributed; or
- converting a beneficiary's limited power of appointment into a general power of appointment by a technique commonly known as "tripping the Delaware tax trap."

Consequently, the assets included in the beneficiary's estate would receive a step-up in income tax basis at the beneficiary's death and would take advantage of the beneficiary's unused federal estate tax exemption amount. Whether these techniques should be implemented depends on a careful analysis of the basis of the assets held in trust, the beneficiary's assets and applicable exclusion amounts, which should be discussed with advisors.

529 Plan Changes

The TCJA expanded the benefits of 529 Plans for federal income tax purposes. Historically, withdrawals from 529 Plans have been free from federal income tax if the funds were used toward qualified higher education expenses. Under the TCJA, qualified withdrawals of up to $10,000 can now also be made from 529 Plans for tuition in K-12 schools. As a result, the owner of the 529 Plan can withdraw up to $10,000 per beneficiary each year to use towards K-12 education. The earnings on these withdrawals will be exempt from federal income tax under the TCJA. However, because each state has its own specific laws addressing 529 Plan withdrawals and not all states provide that withdrawals for K-12 tuition will be exempt from state income taxes, taxpayers should consult with their advisors to confirm the rules in their respective states. A concern with 529 plans is that leftover funds no longer needed for educational purposes may be trapped in the account unless a penalty is paid when the account is withdrawn for a non-qualified purpose. SECURE 2.0 (discussed further below) permits a beneficiary of 529 accounts to roll over up to $35,000 over their lifetime from any 529 account into a Roth IRA.

Planning to Utilize Increased Federal Exemptions

Given that the increased federal exemption amounts are currently set to sunset at the end of 2025, it may be prudent to make use of these increased amounts before they disappear (with the caveat that the law may, of course, change prior to 2026). We note that a change in the law can occasionally occur with little advanced notice and that 2025 will be a very busy time for estate planners and, perhaps more importantly, appraisers. Accordingly, for individuals who plan to use their exemption prior to the end of 2025, clients are encouraged to complete that planning in 2024 to avoid the 2025 rush (plus, the sooner an individual acts, the more appreciation on and income from the transferred assets can accumulate outside of the taxable estate).

Gifting Techniques to Take Advantage of the Increased Applicable Exclusion Amount

Taxpayers may want to consider making gifts to utilize the increased federal exclusion amount. It is less expensive to make lifetime gifts than to make gifts at death because tax is not imposed on dollars used to pay gift tax, but estate tax is imposed on the dollars used to pay estate tax. In addition, taxpayers may benefit by removing any income from and appreciation on the gift from their estate. However, taxpayers should seek advice if they have used all their applicable exclusion amount and would pay federal gift tax on any gifts. Making gifts that result in significant gift tax payments may not always be advisable in the current environment.

A countervailing consideration of lifetime gifting is that the gifted assets will not get a step-up in basis upon death (as would assets held at death) and will thus generate capital gains tax if they are subsequently sold for an amount higher than their basis. The Internal Revenue Service (IRS) released Revenue Rule 2023-02, which reiterated this previously well-established trade-off. Accordingly, the decision of whether and how to embark on a lifetime gifting strategy depends on several factors, including the basis of the transferor's various assets, their projected income and appreciation, the total amount of the transferor's assets and the transferor's remaining applicable exclusion amount. For individuals with assets far exceeding their applicable exclusion amounts, lifetime gifting of high-basis assets generally may be recommended. However, individuals with total assets close to or below their applicable exclusion amounts should exercise caution before making gifts of low-basis assets. Instead, those individuals should consider holding their assets until death to achieve a step-up in basis upon death while minimizing estate taxes. Of course, maintaining a comfortable standard of living is a factor that also must be considered. We are available to discuss this analysis with you in more detail.

If undertaking a gifting strategy, gifts to utilize the increased exemption may be made to existing or newly created trusts. For instance, a taxpayer could create a trust for the benefit of the taxpayer's spouse (a spousal lifetime access trust (SLAT)) and gift assets to the SLAT utilizing the taxpayer's increased federal exemption amounts. The gifted assets held in the SLAT should not be includible in the taxpayer's or spouse's respective taxable estates, and distributions could be made to the spouse from the SLAT to provide the spouse with access to the gifted funds, if needed, in the future. Of course, marital stability and the health of the other spouse need to be considered. Additionally, gifts could be made by a taxpayer to dynasty trusts (to which GST exemption is allocated), which would allow the trust property to benefit future generations without the imposition of estate or GST tax.

There are several important considerations to remember when using a SLAT or SLATs. Both the taxpayer and the taxpayer's spouse can create SLATs for each other, but the SLATs cannot be "reciprocal." That is to say, the two SLATs cannot have the same trust terms with the only difference being the identity of the beneficiary. Under the reciprocal trust doctrine, gifts made to irrevocable trusts that are deemed reciprocal are treated as being included in each grantor's taxable estate, which leads to the opposite of the desired result. There are several easy ways to ensure that SLATs are not reciprocal, namely:

- having a different class of beneficiaries (i.e., spouse versus spouse and descendants);
- including powers of appointment with different classes of potential appointees;
- different termination date of each SLAT; and
- distribution standard (best interests versus support).

Another important consideration when utilizing multiple SLATs is the timing of the gifts. This is particularly important if the taxpayer and the taxpayer's spouse have unequal assets. In a situation where one spouse has a significantly larger portion of a married couple's assets, SLATs can still be used, first with one spouse gifting a portion of assets to the other spouse, followed by the receiving spouse gifting the same assets to a SLAT for the benefit of the first spouse. Importantly, and in particular, when considering the impending sunset of the exemption amounts, this is not a strategy that can be implemented in the span of a few days, weeks, or perhaps, even in a month or the same calendar year. Although there is no clear answer, the 2021 *Smaldino* case provides some guidance. See *Smaldino v. Commissioner*, T.C. Memo 2021-127. In *Smaldino*, the taxpayer engaged in a series of transactions, as follows:

- The taxpayer transferred a 41 percent interest in an LLC to his spouse.
- *One day later*, the spouse transferred the same 41 percent LLC interest to a Dynasty Trust for the benefit of the taxpayer's descendants.
- That same day, the taxpayer transferred an additional 8 percent in the LLC to the Dynasty Trust.
- The end result was the taxpayer owned a 51 percent interest in the LLC, and the Dynasty Trust owned a 49 percent interest in the LLC.

The Tax Court held that the taxpayer made a gift of a 49 percent interest in the LLC to the Dynasty Trust because the taxpayer's spouse was never admitted as a member of the LLC, never exercised the rights of a member and no evidence was presented that the spouse ever received any benefit or burden of being a member. As a result of the finding, gift tax was assessed against the taxpayer.

Although *Smaldino* had some particularly egregious facts for the taxpayer, the importance of the timing of such transactions cannot be understated. Notably, *Smaldino* did not specify a timeline that would have deemed the taxpayer's spouse's gift of the 41 percent LLC interest valid. In an ideal situation, a sequence of transactions that requires the taxpayer to make a gift to the taxpayer's spouse prior to the taxpayer's spouse gifting those same assets would be completed over separate tax years (i.e., a gift to the taxpayer's spouse in 2024 tax year, a spouse's gift to irrevocable trust in 2025 tax year). With limited time remaining until the sunset, now is the time to consider such a gifting strategy.

In addition to using a SLAT, taxpayers may make gifts to irrevocable dynasty trusts (to which GST exemption is allocated) for the benefit of the taxpayer's children and/or more remote descendants to allow trust property to benefit future generations. If the strategy is properly implemented, no estate or GST tax will be incurred.

Other Techniques to Take Advantage of the Increased Applicable Exclusion Amount

In addition to making gifts to utilize the increased exemption, below is a summary of several other broadly applicable recommendations:

- **Sales to Grantor Trusts.** In addition to making gifts to irrevocable trusts, taxpayers should consider sales to grantor trusts (or a combination gift/sale). A sale would be in exchange for a down payment (say 10 percent) and a promissory note for the balance, and any interest payments owed back to the grantor may not be subject to income tax, nor should the sale trigger capital gains tax (since the taxpayer is also the taxpayer of the grantor trust for income tax purposes, so it is essentially a sale to oneself). The increased federal exemption may provide a cushion against any asset valuation risk attendant with such sales. Taxpayers who enter into such sale transactions should consider taking advantage of the adequate disclosure rules to start running the three-year statute of limitations. Interest rates on promissory notes are presently at high rates but generally are still advantageous to engage in this type of transaction. Of course, the asset being sold, if not publicly traded, should be appraised by a qualified appraiser.
- **Loan Forgiveness/Refinancing.** If taxpayers are holding promissory notes from prior estate planning transactions, from loans to family members or otherwise, they should consider using some or all the increased federal exemption amounts to forgive these notes. Consideration could be given to refinancing existing notes, but given the higher interest rates, that may not be advantageous at present.
- **Allocation of GST Exemption to GST Non-Exempt Trusts.** If a taxpayer's existing estate plan utilizes trusts that are subject to GST tax (GST non-exempt trusts), consideration should be given to allocating some or all of the taxpayer's increased GST exemption amount to such trusts.
- **Balancing Spouses' Estates.** For married taxpayers, if the value of the assets owned by one spouse is greater than the increased federal exemption amounts and greater than the value of the assets owned by the other spouse, consideration should be given to transferring assets to the less propertied spouse. Such a transfer would provide the less propertied spouse with more assets to take advantage of the increased federal exemption amounts, especially the increased GST exemption, which is not portable to the surviving spouse upon the first spouse's death. Taxpayers should be mindful, however, that transfers to non-US citizen spouses are not eligible for the unlimited marital deduction for federal gift tax purposes, and such transfers should stay within the annual exclusion for such gifts ($185,000 in 2024; $190,000 in 2025) to avoid federal gift tax. Additionally, creditor protection should be considered before transferring assets from the joint name or from one spouse's name to the other spouse's name. Note that the annual exclusion for gifts (to donees other than a spouse) is $18,000 in 2024 and $19,000 in 2025.

- **Life Insurance.** Taxpayers may wish to review or reevaluate their life insurance coverage and needs with their insurance advisors.

Review and Revise Your Estate Plan to Ensure It Remains Appropriate

As noted above, any provisions in wills and trust agreements that distribute assets according to tax formulas and/or applicable exclusion amounts should be reviewed to ensure that the provisions continue accurately to reflect the testator's or grantor's wishes when taking into account the higher applicable exclusion amounts. Consideration should also be given to including alternate funding formulas in wills or trust agreements that would apply if the federal estate tax exemption amounts do sunset in 2026.

Additionally, in light of the increased exemption amounts, taxpayers should also consider whether certain prior planning is now unnecessary and should be unwound, such as certain qualified personal residence trusts, family limited partnerships (FLPs) and split-dollar arrangements.

Allocation of GST-applicable exclusion amounts should be reviewed to ensure that it is utilized most effectively if one wishes to plan for grandchildren or more remote descendants. In addition, due to the increased GST exemption amounts available under the TCJA, allocation of some or all of one's increased GST exemption amounts to previously established irrevocable trusts that are not fully GST exempt may be advisable.

Taxpayers should continue to be cautious in relying on portability in estate planning, as portability may not be the most beneficial strategy based on your personal situation. In addition, a deceased spouse's unused exclusion (DSUE) may not be available upon remarriage of the surviving spouse. Furthermore, since the DSUE amount is frozen upon the first spouse's death, no appreciation is allocated to the DSUE amount between the first spouse's death and the surviving spouse's subsequent death, which would limit the amount of transfer-tax-free assets that could pass to beneficiaries. However, when a credit shelter trust is used in lieu of portability, the appreciation of the assets funding the credit shelter trust will inure to the beneficiaries' benefits. However, portability may be a viable option for some couples with estates below the combined exemption amounts. Portability can be used to take advantage of the first spouse to die's estate tax exemption amount, as well as obtain a stepped-up basis at each spouse's death. Portability can also be used in conjunction with a trust for the surviving spouse (a QTIP trust) to incorporate flexibility for post-mortem planning options. Factors such as the asset protection benefits of utilizing a trust, the possibility of appreciation of assets after the death of the first spouse, and the effective use of both spouses' GST exemption and state estate tax should be discussed with advisors in determining whether relying on a portability election may be advisable. For taxpayers looking to make a portability election, effective July 8, 2022, Rev. Proc. 2022-32 provides certain taxpayers with a more simplified method to make the portability election, allowing them to be able to elect the portability of a DSUE up to five years after the decedent's date of death.

Unmarried couples should particularly continue to review and revise their estate planning documents and beneficiary designations. Since the advent of same-sex marriage, it is now clear that domestic partners, even if registered as such, do not qualify for the federal (and in many cases state) tax and other benefits and default presumptions that are accorded to married couples.

Finally, in view of the potential sunset of many pertinent provisions of the TCJA, estate plans should provide as much flexibility as possible. As noted above, formula bequests should be reviewed to ensure they are appropriate under current law, and consideration should be given to granting limited powers of appointment to trust beneficiaries to provide flexibility for post-mortem tax planning. A trust protector (or trust protector committee) may also be appointed to give a third party the ability to modify or amend a trust document based on changes in the tax laws or unforeseen future circumstances or to grant certain powers to trust beneficiaries that may have tax advantages under a new tax regime (such as the granting of a general power of appointment to trust beneficiaries in order to obtain a stepped-up basis in trust assets at the beneficiary's death).

Mitigate Trust Income Tax and Avoid the Medicare Surtax With Trust Income Tax Planning

Non-grantor trusts should consider making income distributions to beneficiaries. Trust beneficiaries may be taxed at a lower tax rate, especially due to the compressed income tax brackets applicable to non-grantor trusts. Additionally, a complex, non-grantor trust with an undistributed annual income of more than $12,500 (adjusted for inflation) will be subject to the 3.8 percent Medicare surtax. However, some or all of the Medicare surtax may be avoided by distributing such income directly to beneficiaries who are below the individual net investment income threshold amount for the Medicare surtax ($200,000 for single taxpayers, $250,000 for married couples filing jointly and $125,000 for married individuals filing separately).

To determine whether trusts should distribute or retain their income, beneficiaries' circumstances and tax calculations should be carefully evaluated.

Transfer Techniques

Many techniques that have been utilized in prior years continue to be advantageous planning techniques under the TCJA. Due to the potential sunsetting of many applicable provisions of the TCJA, consideration should be given to planning that minimizes the risk of paying current gift taxes but still allows taking advantage of the increased exemptions amounts to shifting assets and appreciation from the taxable estate. Additionally, consideration should be given to selling hard-to-value assets to grantor trusts, due to the increased exemption available to "shelter" any valuation adjustment of these assets upon audit. Lifetime gifting and sales transactions remain very important in providing asset protection benefits for trust beneficiaries, shifting income to beneficiaries in lower tax brackets, and providing funds for children or others whose inheritance may be delayed by the longer life expectancy of one's ancestors.

Grantor Retained Annuity Trusts (GRATs)

GRATs remain one of our most valuable planning tools, though given recent higher interest rates, their practicality has decreased. Under current law, GRATs may be structured without making a taxable gift. Therefore, even if one has used all his or her applicable exclusion amount, GRATs may be used without incurring any gift tax. Because GRATs may be created without a gift upon funding, they are an increasingly attractive technique for clients who want to continue planning to pass assets to their descendants without payment of gift tax in the uncertain tax environment.

A GRAT provides the grantor with a fixed annual amount (the annuity) from the trust for a term of years (which may be as short as two years). The annuity the grantor retains may be equal to 100 percent of the amount the grantor used to fund the GRAT, plus the IRS-assumed rate of return applicable to GRATs. For transfers made in November 2024, this is 4.4 percent. For transfers made in December 2024, the applicable rate will be 5 percent. As long as the GRAT assets outperform the applicable rate, at the end of the annuity term the grantor will be able to achieve a transfer tax-free gift of the spread between the actual growth of the assets and the IRS assumed rate of return. Although the grantor will retain the full value of the GRAT assets, if the grantor survives the annuity term, the value of the GRAT assets in excess of the grantor's retained annuity amount will then pass to whomever the grantor has named, either outright or in further trust, with no gift or estate tax.

Qualified Personal Residence Trust (QPRT)

A similar type of transaction is a transfer of the taxpayer's residence to an irrevocable QPRT. A QPRT allows the taxpayer to enjoy the use of the property for a predetermined term. A gift to a QPRT will result in a taxable gift, but the value of the gift is the present value of the grantor's remainder interest in the property, which is dependent in part on the term of the QPRT. The value of the gift also accounts for any mortgage or other debt on the property. When the QPRT terminates, the residence is distributed to the remainder beneficiaries (or to a continuing trust for their benefit), and all the appreciation in the property is outside of the grantor's taxable estate. If the grantor still desires to reside in the property, the grantor can lease the property from the remainder beneficiaries (or from a continuing trust for their benefit) for fair market value, which provides an additional income stream to the trust, and the rent payments are taken out of the grantor's taxable estate without incurring any gift tax.

Sales to Intentionally Defective Grantor Trusts (IDGTs)

Sales to IDGTs have become an increasingly popular planning strategy due to the increased exemption amounts under the TCJA.

In utilizing a sale to an IDGT, a taxpayer would transfer assets likely to appreciate to the IDGT in exchange for a down payment (say 10 percent) and a promissory note from the trust for the balance. From an income tax perspective, no taxable gain would be recognized on the sale of the property to the IDGT because it is a grantor trust, which makes this essentially a sale to oneself. For the same reason, the interest payments on the note would not be taxable to the seller or deductible by the trust.

If the value of the assets grows at a greater pace than the prevailing applicable federal rate (AFR) (For sales in November 2024 the rate is 4 percent for a short-term note. In December 2024 the rate is 4.3 percent for a short-term note.), as with a GRAT, the appreciation beyond the federal rate will pass free of gift and estate tax.

The increased federal exemption amounts may provide a cushion against any asset valuation risk attendant to such sales. Additionally, the increased exemption amounts permit the sale of a substantially larger amount of assets to grantor trusts. Typically, grantor trusts should be funded with at least 10 percent of the value of the assets that will be sold to the trust. With the higher exemption amounts, those who have not used any of their exemptions could contribute up to $13.61 million (or $27.22 million if splitting assets with a spouse) to a grantor trust in 2024. This would permit the sale of up to $136.1 million (or $272.2 million) of assets to the trust in exchange for a promissory note with interest at the appropriate AFR.

Consider a Swap or Buy Back of Appreciated Low-Basis Assets From Grantor Trusts

If a grantor trust has been funded with low-basis assets, the grantor should consider swapping or buying back those low-basis assets in exchange for high-basis assets or cash. If the grantor sold or gave (through a GRAT or other grantor trust) an asset with a low basis, when that asset is sold, the gain will trigger capital gains tax. However, if the grantor swaps or purchases the asset back from the grantor trust for fair market value, no gain or loss is recognized. The trust would then hold cash or other assets equal to the value of the asset that was repurchased. Alternatively, many grantor trust instruments give the grantor the power to substitute the trust's assets with other assets, which would allow the low-basis assets to be removed from the trust in exchange for assets of equal value that have a higher basis. Then, on the grantor's death, the purchased or reacquired asset will be included in the grantor's taxable estate and will receive a step-up on a basis equal to fair market value, eliminating the income tax cost to the beneficiaries. Those whose estates may not be subject to estate taxes due to the current high exemption amounts may utilize swaps or buy-backs to "undo" prior planning strategies that are no longer needed in today's environment. Particular care should be taken when considering swapping assets that are hard to value. In that circumstance, an appraisal from a qualified appraiser should be obtained to support the valuation of the swapped assets. This not only helps limit fiduciary liability claims but also protects against an argument that the swap was not done for assets of equal value, which could potentially result in a gift being made by the grantor to the trust.

Consider the Use of Life Insurance

Life insurance presents significant opportunities to defer and/or avoid income taxes, as well as provide assets to pay estate tax or replace assets used to pay estate tax. Generally speaking, appreciation and/or income earned on a life insurance policy accumulates free of income taxes until the policy owner makes a withdrawal or surrenders or sells the policy. Thus, properly structured life insurance may be used as an effective tax-deferred retirement planning vehicle. Proceeds distributed upon the death of the insured are generally completely free of income taxes. Taxpayers should consider paying off any outstanding loans against existing policies in order to maximize the proceeds available tax-free at death, although potential gift tax consequences must be examined. Note that the decision to pay off such loans requires a comparison of the alternative investments that may be available with the assets that would be used to repay the loans and the interest rate on the loans.

Use Intra-Family Loans and Consider Refinancing Existing Intra-Family Loans

While these techniques work better when interest rates are low, because the exemption amounts are so high, many techniques involving the use of intra-family loans should be considered, including:

- The purchase of life insurance on the life of one family member by an irrevocable life insurance trust, with premium payments funded by loans from other family members.
- The creation of trusts by older generation members for the benefit of younger family members, to which the older generation members provide a small seed gift and then loan more substantial funds. The spread between the investment return earned by the trust and the interest owed on the note will create a transfer tax-free gift.
- Forgiving loans previously made to family members. The amount that is forgiven in excess of the annual gift tax exclusion amount will be a gift and thus will use a portion of one's applicable gift tax and/or GST tax exclusion amount. This may be a beneficial strategy considering the increased exemption amounts.

Installment Sale to Third-Party Settled GST Tax-Exempt Trust

Unique planning opportunities and transfer tax benefits may be available if a relative or friend of the taxpayer has an interest in creating and funding a trust for the benefit of the taxpayer and/or the taxpayer's family. For example, a third-party grantor (e.g., a relative or friend of the taxpayer) could contribute cash to a trust for the benefit of the taxpayer, allocate GST tax exemption to that gift, and then that trust could purchase assets from the taxpayer in exchange for such cash and a secured promissory note in the remaining principal amount of assets purchased. While this sale could result in payment of capital gains tax to the taxpayer (ideally at an earlier, lower value), this planning could present the following potential benefits:

- there should be no transfer tax concerns for the third-party grantor if the grantor's other assets, even when added to the value of the foregoing gift, would not be sufficient to cause the estate tax to apply at the grantor's death (this depends on what the estate tax exemption amount is at the grantor's subsequent death);
- the assets could receive a step-up in basis as of the date of the initial sale;
- the taxpayer could be a beneficiary, hold a limited power of appointment over, and control who serves as trustee, of the trust;
- the appreciation in the value of the asset being sold from the date of the initial sale above the interest rate on the promissory note (e.g., 3.7 percent is the mid-term AFR for a sale completed in November 2024 and 4.18 percent is the mid-term AFR for a sale completed in December 2024) would accrue transfer-tax-free for the benefit of the taxpayer and/or the taxpayer's family; and
- the trust could be structured in such a way as to provide protection from the taxpayer's creditors and remove the trust assets from the taxpayer's and his or her family members' taxable estates.

To achieve the foregoing benefits, it is important that only the third-party grantor makes gratuitous transfers to the trust and that the third-party grantor is not reimbursed for such transfers.

Disclaimer Planning

If applicable, taxpayers may consider disclaiming assets they stand to inherit from a predeceased spouse or other relative. This keeps the disclaimed assets out of the taxpayer's estate, and if structured properly, the disclaimer is not treated as a gift. This could be a useful tool for taxpayers looking to take advantage of the GST exemption, as the GST exemption is not portable and does not receive the same double exemption as the gift/estate tax exemptions receive. Additionally, this may be useful in a jurisdiction like New York, where the state-level estate tax exemption is lower than the federal estate exemption. Accordingly, by a surviving spouse disclaiming assets that are going to be received from the deceased spouse and using some or all of the deceased spouse's available estate tax exemption, it is possible that the resulting net worth of the surviving spouse is below the state-level estate tax exemption.

Consider Charitable Planning

A planning tool that is very effective in a high-interest rate environment is a Charitable Remainder Annuity Trust (CRAT), which combines philanthropy with tax planning. A CRAT is an irrevocable trust that pays an annual payment to an individual (typically the grantor) during the term of the trust, with the remainder passing to one or more named charities. The grantor may receive an income tax deduction for the value of the interest passing to charity. Because the value of the grantor's retained interest is lower when interest rates are high, the value of the interest passing to charity (and therefore the income tax deduction) is higher.

Alternatively, a strategy that works better in a low interest rate environment is a Charitable Lead Annuity Trust (CLAT). A CLAT is an irrevocable trust that pays one or more named charities a specified annuity payment for a fixed term. At the end of the charitable term, any remaining assets in the CLAT pass to the remainder, noncharitable beneficiaries. As with a GRAT, to the extent the assets outperform the IRS assumed rate of return, those assets can pass transfer-tax-free to the chosen beneficiaries. A CLAT may become an attractive option if interest rates fall.

Be mindful of the ability to make IRA charitable rollover gifts, which allows an individual who is age 70 1/2 or over to make a charitable rollover of up to $100,000 (adjusted for inflation, pursuant to SECURE 2.0, discussed next) to a public charity without having to treat the distribution as taxable income. Other types of charitable organizations, such as supporting organizations, donor-advised funds or private foundations, are not eligible to receive the charitable rollover. Therefore, if a taxpayer needs to take a required minimum distribution, he or she may arrange for the distribution of up to $100,000 (adjusted for inflation) to be directly contributed to a favorite public charity and receive the income tax benefits of these rules. Due to new limitations on itemized deductions (i.e., the cap on the state and local tax deduction), some taxpayers may no longer itemize deductions on their personal income tax returns. Without itemized deductions, these taxpayers could not receive the income tax benefit of a charitable deduction for charitable contributions.

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