Developing a Plan

There are numerous factors that you must consider as you evaluate how to take advantage of the current lifetime exemption. Key issues include your wealth profile, remaining exemption amounts, intended beneficiaries and the assets in your portfolio. Individuals should only consider maximizing their exemption if they have enough money to maintain their lifestyle and to meet ongoing commitments over the course of their life.

HERE ARE SOME QUESTIONS TO THINK ABOUT...

How much of your lifetime exemption have you used to date?

In order to develop an effective plan, it is crucial to understand how much capital you have left to gift under the maximum lifetime exemption. Your accountant or estate planning attorney will have this information or you can review your most recent gift tax return that was filed to determine your remaining exemption.

Who will be your beneficiary?

Are you gifting your assets to children, grandchildren or a friend? When gifting to an individual, we recommend establishing a trust if one is not already in place. A trust allows you to put conditions on how and when your assets are distributed while reducing your gift and estate taxes. If the trust is structured as a grantor trust, you will continue to pay the income tax on the trust without the tax payments being considered an additional gift. Trusts also provide creditor and spousal protection in the event of a bankruptcy, litigation or divorce.

Do you have the right team in place to structure your estate plan?

Determining the most efficient and appropriate legal structure for beneficiaries can be extremely complicated. It is critical to have the right legal, accounting and investment team in place to help weigh the various options. We recommend forming a team of partners at the outset to develop your plan in a timely manner and avoid any last-minute setbacks. We will partner with your estate planning lawyers and accountants to create the best plan for you.

Which assets should you gift?

The assets that you transfer to your beneficiaries under the lifetime exemption can make a substantial difference. You need to carefully select assets that will minimize the impact of taxes while maximizing the dollar value of the gift.

There are two tax considerations to keep in mind. The first is whether the asset could qualify for a discounted valuation for tax purposes. Investments in private equity, limited partnership interests and non-voting interests in business entities are often valued at a discount by a qualified appraiser. A qualified appraiser will consider the fact that the interests are not publicly traded (marketability discount) and most likely represent a minority interest (minority discount). The combination of these two discounts may be as high as 35%. For example, if you were to gift $10 million in private equity, an appraiser may value those interests as low as $6.5 million, and thus you would only utilize $6.5 million of your lifetime exemption. An appraiser would similarly discount non-voting closely held business interests due to the lack of control and marketability associated with the non-voting stock.

The second tax consideration when gifting assets is whether the asset has a low-cost basis relative to current value. Since the person receiving the gift assumes the donor's cost basis, you want to be careful not to create a capital gains problem while solving a gift tax problem. In general, cash and assets with little or no appreciation are better for gifts to individuals as opposed to appreciated securities. If an asset has appreciated significantly prior to the gift, the recipient could incur a substantial taxable gain when selling that asset. For example, a gift of $10 million in appreciated stock, may ultimately be worth $8 million or even less to the beneficiary after paying capital gains taxes but utilizes $10 million of the donor's lifetime exemption. A $10 million gift of illiquid investments or cash would be more tax efficient.