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Estate Planning in a Changed World

ESTATE PLANNING, PRIVATE CLIENT SERVICES, TAX
BY

The year 2020 has been a difficult time for all of us. As our economy reopens and we begin our slow journey back to normal life, we wanted to reach out to let you know that the current environment provides a number of estate planning opportunities that may not last forever.

First, if you are considering gifts to your loved ones, either outright or in trust, now is a good time to act. By using what is known as your “gift tax annual exclusion,” you can gift up to \$15,000 each year to as many people as you want without reporting the gifts or paying gift tax. If you are married and choose to split gifts with your spouse, that amount increases to \$30,000. In addition to this annual exclusion, you may now gift up to \$11.58 million (\$23.16 million for couples) during your lifetime free of tax. Gifting is a great idea in the current environment because depressed asset values allow you to pass assets to your loved ones at a significant discount. When the market rebounds, and the gifted assets rise in value, none of this appreciation will be included in your taxable estate.

Second, now is an ideal time to consider the benefits of a grantor retained annuity trust, known in the estate planning world as a “GRAT.” A GRAT is a mechanism whereby a taxpayer transfers undervalued or highly appreciating assets to an irrevocable trust while retaining the right to receive annuity payments for a predetermined period of time. When the GRAT term ends, the trust assets, and any appreciation in value of the assets over and above the annuity’s interest rate, are passed to the beneficiaries free of gift taxes. GRATs established in down markets are generally sensible because the hurdle growth rate required to be surpassed in order to successfully transfer appreciation is much lower than in

times of higher interest rates. The more that asset prices rebound during the GRAT term, the more tax-free appreciation will be passed to your loved ones.

Today's environment also lends itself to the possibility of refinancing existing intra-family loans at lower rates. It may also be possible to use "swap powers" in irrevocable trusts to exchange low-basis assets owned by the trusts for high-basis assets owned individually. This will maximize the step-up in basis allowed at death and thus minimize the capital gains taxes paid by your beneficiaries when they later sell the assets. Additionally, new rules on charitable contributions make this year a great time to give to your favorite charity.

If taking advantage of these opportunities is of interest to you, we encourage you act before this window of opportunity closes. These techniques will become less attractive as the market rebounds. In addition, the political climate may shift as a result of the upcoming election, and several of the planning tools described in this article have been on the legislative chopping block for quite some time. Please feel free to reach out to us to discuss which planning opportunities may work best for you and your family.

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