**ESTATE PLANNING IN PIVOTAL AND UNPRECEDENTED TIMES**

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1. Basics:

a. Estate/Gift/GST Tax Exemptions are $11,580,000 for 2020 gifts/deaths.

b. Indexed for inflation through the end of 2025 absent Congressional action.

c. On January 1, 2026, without further action, exemption drops to $5,000,000 indexed for inflation (likely between $6,000,000 and $7,000,000).

d. You may have heard there’s an election in November, and action in 2021 by Congress is entirely possible to reduce the exemptions and/or raise the 40% rate for political and/or deficit-closing reasons.

2. Planning for Estates Which Will Be Taxable “No Matter What”.

a. An unprecedented confluence of events:

i. Depressed asset values (marketable securities still 15% or more off their highs; real estate subject to lower valuations due to tenants not paying rent, etc.)

ii. Unbelievably low interest rates (AFRs; 7520 rate)

A. May: ST .25%, MT .58%, LT 1.15%. 7520 rate .8%

B. June: ST .18%, MT .43%, LT 1.01%. 7520 rate .6%

iii. IRS has confirmed no “clawback” if exemption used on gifts exceeds exemption available at death [TD 9884, 11/26/2019; final regulations under Section 2010].

b. Techniques to reduce estates:

i. Intra-family loans to be forgiven at death.

ii. GRATs/CLATs—both incredibly powerful with low interest rates.

iii. Or the good-old-fashioned outright gifts/gifts in trust with no strings attached.

c. All three of the above techniques can be used to fund (delayed or immediately) life insurance to pay estate taxes.

i. Intra-family loans could be used to lend premiums to an irrevocable trust for life insurance needed to provide liquidity to pay estate taxes, subject to the “private split-dollar” rules.

ii. For a GRAT, a life insurance policy can be purchased on the grantor and/or spouse with ownership by the irrevocable trust that will receive the remainder amount from the GRAT at the end of its term. The policy death benefit can be used to pay estate tax that will be due on the balance of the taxable estate. Income stream from the GRAT can be used to pay the premiums. So if the term of the GRAT is 12 years, a life insurance policy on the grantor and/or grantor’s spouse that is paid up at the end of 12 years could be established. The grantor makes annual gifts to the irrevocable trust and uses the income stream from the GRAT to pay premiums. Annual gift exclusions can be used, as can a portion of the lifetime exemption to purchase a guaranteed annuity that will pay the 11 premiums due after the first year.

iii. Outright gifts can be leveraged using gifts of premiums to ILIT’s. Both annual exclusion gifts and lump sums can be used to pay premiums. Can use portion of current larger lifetime exemption to pay 1st year premium, then guaranteed single premium immediate annuity to pay balance of premiums due. So for a 10-pay policy, 1st year premium paid, then use present lump sum guaranteed single premium annuity to pay premiums for years 2-10. If whole life, death benefit increases over time.

3. Estates Which Might Not Be Taxable or Definitely Won’t Be Taxable

a. Still a good time to gift—see 2.a above, but consider loss of stepped-up basis.

b. California issues:

i. Possible California estate tax on estates between $3,000,000 and federal exemption.

ii. Possible repeal/strict limitation of parent-child reassessment exclusion for real estate. Use it before it is gone?

c. “Why are we still paying for that life insurance we bought 10 years ago? Can’t we just cash it in?”

i. See 1.d above.

ii. Hanging trustee of ILIT out to dry. Would need notice of intent to change or terminate policy to avoid lawsuits by beneficiaries.

iii. Evaluation of policy alternatives to surrender [KATHY] and presentation to beneficiaries for consent [JEFF]:

1. “Let it ride” with no further premium payments.
   1. Get in-force ledgers to see how long policy will last.
   2. Consider health/life expectancy of the insured and future insurability.

B. Cut death benefit and make it “paid up”.

C. Reduce premium payments and/or have dividends pay or reduce premiums.

D. In all cases, review differences in life insurance benefits with the beneficiaries, and consider estate size after reduction of lifetime exemption. Also consider projected growth of estate assets values over clients’ life expectancies.

E. Consider charitable beneficiaries for policies not needed for estate transfer purposes.