Estate Planning Overview

Coblentz Patch Duffy & Bass LLP

Estate Planning Overview

Why Create an Estate Plan?

- Smooth transfer of assets from one generation to the next
- Avoid probate
  - Public proceeding
  - Fees
  - Time
- Customized plan for the needs of the family
- Tax and succession planning

Estate Planning Documents

- Revocable Living Trust
- Will
- Durable Power of Attorney for Finances
- Advanced Health Care Directive
- Funding Documents
    - Deeds
    - Assignments
    - Beneficiary Designations
        - Qualified Plans - IRAs/401(k)s
        - Life Insurance

Revocable Living Trust

- Key Terms
  - Trustor(s): The person who makes the Trust
  - Trustee: The person who manages the Trust
  - Beneficiary: The person who gets the benefit of the Trust
- Revocable and amendable during life
- No change in management
- Ease of Administration in the event of incapacity and/or death
- Privacy of Administration on Death
- Flexibility for tax planning and complexity

Planning Considerations for Married Persons with Joint Estate Plan

Option 1

$10M Estate

At First Death

$5M to the Survivor's Trust

$5M to Marital Trust

Advantage: Protection (spouse, beneficiaries, undue influence) & Tax Planning Options

Option 2

$10M Estate

At First Death

$10M in continuing Trust for survivor

~~Marital Trust~~

Advantage: Automatic Double Step up in Basis & Simplicity

Planning Considerations for Descendants

- Distribution Outright or in Trust
- Customization for Family Needs
  - Family dynamics
  - Assets – consider other planning and inheritance
  - Succession goals
- Ongoing Irrevocable Trusts for Children and Descendants
  - Trustee Restrictions – Age, Other Factors
  - Power of Appointment – Consider Limited

Pour-Over Will

- Anything left outside the Trust is left to the Trust
- Safety net in case you forget to title something, ensures your wishes are still followed
- Best practice is to have a new pour-over will every time you amend your trust
- Guardianship Provisions

Durable Power of Attorney

- Key Terms
  - Principal: You
  - Agent/Attorney in Fact: The one who will make decisions for you
- Durable: Remains effective even upon incapacity
- Does not apply to Trust Assets
- Types of Decisions
  - Financial
  - Personal
  - Business
- Springing v. Non-Springing Power of Attorney

Advance Health Care Directive

- Key Terms
  - Principal: You
  - Agent for Healthcare: The one who will make decisions for you
- Types of Decisions
  - Medical Only
  - Guidance to Agent
  - Organ donation

Funding & Beneficiary Designations

- Importance of Funding
- Deeds for Real Property
- Assignments & Updating Corporate Records
- Beneficiary Designations
    - Life Insurance
    - Qualified Plans – IRA/401(k)
        - Tax Considerations - Secure Act

Advanced Estate and Gift Tax Planning
Current Tax Landscape - 2024

- Estate and Gift Tax Exemption
  - $13.61M per person
  - $27.22M if married
  - Estate Tax Rate – 40%
  - No CA Estate Tax
- Annual Exclusion
  - $18,000 per person
- Federal estate tax exemption will sunset after December 31, 2025 and move to $5M indexed for inflation
- A larger population will be subject to estate tax and necessitating advanced planning

Types of Trusts & Planning Techniques

Irrevocable GST Trust: Generation-Skipping Transfer Tax Trust

- Grantor
- Non-Grantor

ILIT: Irrevocable Life Insurance Trust

QPRT: Qualified Personal Residence Trust

GRAT: Grantor Retained Annuity Trust

CRT: Charitable Remainder Trust

CLT: Charitable Lead Trust

SLAT: Spousal Lifetime Access Trust

Irrevocable GST Trust – Structure

- Sometimes referred to as a dynasty trust
- The assets in the trust are excluded from the taxable estate of the grantor at death
- Moves wealth down generations and takes advantage of GST exemption for maintaining wealth estate tax free
- Grantor gifts and/or sells assets to the Trust and “freezes” the value
- Appreciation accrues in the hands of the beneficiary, and when paired with GST protection, accrues in the future without payment of estate tax
- Grantor Trust vs Non-Grantor Trust
    - Grantor Trust: Income tax goes on personal return of the grantor (IDGT)
        - Grantor pays the income tax on income in the trust which is not considered a gift, further depleting the grantor’s taxable estate
    - Non-Grantor Trust: Income is paid by the trust and/or beneficiaries

Irrevocable GST Trust – Planning Benefits

- Maintains family assets and allows for succession in family-run assets
- Offers a unique opportunity for planning where a beneficiary is a

  spendthrift or had creditors such as:
  - Traditional (credit/loan/debt)
  - Gambling/addiction issues
  - Divorce/commingling
- Opportunity for fractional interest discounting

Gift to Irrevocable Trust Example (Very Simplified)

Facts

- Gift to Irrevocable Trust of property worth $10M
- Income from Irrevocable Trust of $10M over ten years
- Irrevocable Trust is Grantor Trust – Grantor pays the income taxes

Outcome

- Gift tax return shows gift of $10M
- Grantor pays tax of approximately $5M over the ten years
- IDGT has grown to $20M in 10 years
- Use of exemption: $10M, avoided estate tax on gift plus $10M in income plus $5M in paid tax

Sale to Irrevocable Trust Planning Example (Very Simplified)

Facts

- Gift to Irrevocable Trust of $1M cash
- Sale to Irrevocable Trust of property worth $10M via low-interest note (must be AFR)
- Income from sold property of $10M over ten years
- Irrevocable Trust is Grantor Trust – Grantor pays the income taxes

Outcome

- Gift tax return shows gift of $1M
- Grantor pays the tax of approximately $5M over the ten years on income
- Grantor receives income on note
- Use of exemption: $1M, avoided estate tax on gift plus $10M in income and $5M in paid tax

Fractional Interest Gifting

- Fractional gifts are worth less than a portion of their whole
- Example: Transferor has 4 properties worth $1M each
  - A gift of a property to each of their 4 children results in the use of $4M of exemption
  - Growth occurs outside of the estate
- Example 2: Transferor has 4 properties worth $1M each
  - A gift of a 25% interest to each child results in a fractional gift
  - Even with only a 20% discount, only use $3.2M exemption
  - Growth occurs outside of the estate

Considerations - Tax

Income Tax

- Grantor Trust vs. Non-Grantor Trust
- No Step-Up in Basis

Property Tax

- Reassessment on gift or sale unless an exception
- Prop 19 changes
- Use of LLCs

Considerations – Succession Planning

<u>Assets Used In Planning</u>

- Personal Use Assets
- Real Property
- Business Assets
- Cashflow

<u>Family Dynamics</u>

- Treat all beneficiaries equally?
- Hybrid approach, balance between Irrevocable Trust planning and other planning

Succession Planning - Buy-Sell Agreement

- Provides for owners of companies to determine how the assets will pass
- Contractual in nature as opposed to estate planning but important where there are multiple owners who may or may not want to work with the other members of a family
- Forces a conversation regarding succession planning, value of the entity, and funding of a buy-sell
- Ensures that liquidity is available, often through life insurance, to keep the business running and/or pay off the beneficiaries

Charitable Planning Overview

- Assets directed to charity are not subject to estate tax
- Donor Advised Funds (DAFs)
- **Charitable Trust Planning – Charitable Remainder Trust/Charitable Lead Trust**
  - Remainder Trust provides for an annual distribution to a non-charitable beneficiary for a term of years or a measuring life
  - Lead Trust provides for an annual distribution to a charitable beneficiary for a term of years or a measuring life
  - All assets in the trust are excluded from the future taxable estate
  - Can also be used to “smooth” income recognition from highly appreciated assets
  - Provides both an income tax deduction and estate tax benefit

Questions?

My Contact Information

Laura Srebro, Partner

Coblentz Patch Duffy & Bass

Lsrebro@coblentzlaw.com

Office: (707) 603-2722 | Direct: (415) 772-5780