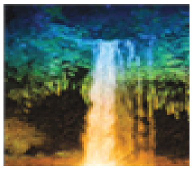

Estate Tax Planning in 2015: Business as Usual?

The American Taxpayer Relief Act of 2012 (ATRA) made "permanent" the $5 million estate and gift tax exemption, and the $5 million generation skipping transfer (GST) tax exemption (exemptions are indexed annually for inflation). Portability (the "deceased spousal unused exclusion" amount) was also made "permanent" under ATRA and the top marginal estate, gift, and GST tax rate is 40%. Although ATRA left the estate, gift, and GST tax regimes relatively intact, the permanent $5 million estate tax exemption effectively repeals the estate tax for all but the wealthiest Americans. For high net worth individuals, therefore, 2015 should be business as usual for estate planners. For all other Americans, ATRA may very well be a game changer. Here are some tried and true, and some new, estate tax planning strategies for 2015. What hasn't changed is the value that life insurance can add to ***<u>all</u> Americans' estate plans.***

1. 2015 *State* Estate Tax Planning Strategies.

Many American families will not be subject to federal estate taxes in 2015. Those who live in states without a *state* estate tax may never pay one penny in estate taxes. For individuals with estates under the federal exemption, the name of the game becomes *state estate tax planning*. For example, New Jersey imposes an estate tax ($675,000 exemption, top marginal rate of 16%) and an inheritance tax (top marginal rate of 16%) on persons who inherit property. Connecticut has its own gift tax ($2 million exemption, top marginal rate of 12%). Hawaii has its own GST tax (tied to the federal exemption with a 2.25% tax rate). Therefore, moderately wealthy Americans are not out of the woods in 2015 and their estate planning strategies should account for the particular tax laws of their state (estate, gift, GST, and/or inheritance taxes) to prevent their families from losing substantial wealth in the future.

2. High Net Worth Individuals Have At Least $90,000 More to Plan With in 2015.

Even individuals who took advantage of 2014's *entire* $5.34 million federal lifetime gift tax exemption may be happy to learn that with 2015's $5.43 million exemption, they have an additional $90,000 of exemption to work with, along with 2015's $14,000 per donee gift tax annual exclusion. These amounts may be used for almost any planning purpose and can facilitate tax efficient lifetime transfers of assets such as shares of small business stock and collectibles, or may be saved for use at death. And, because both the annual exclusion and the exemption are indexed annually for inflation, it may be prudent to continue to keep a watchful eye on asset values and annual exclusion and exemption amounts to reap maximum tax savings.

3. The SLAT May Be the Estate Planning Tool *du Jour* for Moderately Wealthy Americans.

A spousal limited access trust (SLAT) will serve a dual purpose for moderately wealthy Americans who can accomplish estate tax planning and income tax planning with one trust. The SLAT can function as a failsafe to cover any potential estate tax liability *and* to provide protection for beneficiaries. Individuals can also transfer other assets into the SLAT to minimize their federal and/or state estate tax exposure. With spousal lifetime access, the SLAT becomes a triple threat, allowing the insured-grantor of the SLAT (through his/her spouse) to indirectly access assets including cash values of permanent life insurance policies during his/her life, in an income tax-advantaged manner.

4. Life Insurance is Still the Great Estate Equalizer.

Although life insurance's function as an estate tax paying mechanism may be limited to certain wealthy Americans, the argument for life insurance as an estate equalizing mechanism is stronger than ever. If a decedent's $3 million business (or other asset that is difficult or undesirable to divide) passes through her will to her older daughter, unreduced by *any* estate taxes, since she may not have any estate tax liability, what sort of legacy is she going to leave to her younger daughter? As mom has done all her life, she has treated her daughters equally. One way to equalize her daughters' inheritances is to fund an ILIT for the benefit of her younger daughter with a permanent life insurance policy with a full $3 million death benefit.

5. ILITs Should Be Even *More* Attractive to High Net Worth Clients in 2015.

As part of their estate planning, high net worth individuals should continue to use ILITs so that the death benefit is not included in their taxable estate and for the liquidity to pay estate taxes. However, the *income tax* provisions of ATRA and the Patient Protection and Affordable Care Act of 2010 (PPACA) make life insurance an excellent *income tax* planning mechanism for high net worth clients. Cash value growth in whole life policies is not taxed at 2015's top income tax rates,* and will not be subject to the 3.8% Medicare surtax on net investment income** like capital gains and other investment income is.***

6. GRATs and Zeroed-Out GRATs Can Provide Significant Tax Savings in 2015.

President Obama's proposal to require grantor retained annuity trusts (GRATs) to have a minimum term of 10 years can be found *nowhere* in ATRA. GRATs, particularly zeroed-out GRATs (a.k.a. Walton GRATs), should continue to be used by high net worth individuals in 2015.**** High net worth individuals may decide to transfer all or part of a highly appreciating or high income producing asset into a GRAT in order to minimize potential gift tax liability as the gift tax value will be reduced for the value of the retained income stream, and remove the future appreciation of the asset from their estate. For those who have used up their exemption, the zeroed-out GRAT strategy can be used to eliminate or significantly minimize *any* gift tax liability for the donor. Oftentimes, it is advantageous for the donor to use the income she receives from the GRAT to pay the premiums on a permanent life insurance policy to further enhance her estate planning.

7. Review (and Revise if Necessary) All Estate Planning Documents.

All individuals, regardless of net worth, should be encouraged to update their wills, especially if a significant amount of time has passed or significant events have occurred after their will was executed or last updated. Presently assessing the value of your estate will alert you to potential estate tax liability and/or estate liquidity concerns. Estate tax planning should be updated to reflect the increased lifetime gift tax exemption amount of $5.43 million and the $14,000 gift tax annual exclusion amount. An overall review of current planning strategies utilizing trusts should be undertaken, especially to assess the tax efficiency of having an asset pass through a trust without receiving a step-up in basis at death.

And, as always, you should be encouraged to execute other important legal documents that will facilitate your future affairs in the event of illness, mental or physical incapacity such as a living will, health care proxy, and durable power of attorney.

Conclusion: A “one size fits all” approach to estate planning is not advisable in 2015. For high net worth individuals and/or high income earners, traditional estate planning strategies are still relevant. For moderate wealth individuals, planning requires a more nuanced approach. Life insurance will continue to play an integral role in *all* Americans’ estate plans.

* Under ATRA, taxable income in 2015 for married filing joint taxpayers between $411,501 and $464,850 and for single taxpayers between $411,501 and $413,200 will be taxed at 35%; taxable income over $464,850 for married filing joint taxpayers and over $413,200 for single taxpayers will be taxed at 39.6%.

** Under PPACA, a 3.8% surtax will be imposed on certain taxpayers’ “net investment income” (joint taxpayers with modified adjusted gross income over $250,000; single taxpayers with modified adjusted gross income over $200,000). “Net investment income” includes interest, dividends, taxable annuity distributions, capital gains, rents, royalties, etc.

*** Under ATRA, in 2015 there will be a 15% long term capital gains and qualified dividend rates for taxpayers with taxable income of $464,850 or under (joint) and $413,200 or under (single), and 20% long term capital gains and qualified dividend rates for taxpayers with income over $464,850 (joint) and over $413,200 (single). Taken in conjunction with the 3.8% Medicare surtax, certain high income earners may be subject to either an 18.8% tax on capital gains and dividends or a 23.8% tax on capital gains and dividends.

**** Ordinarily a person (donor) will transfer an asset into a GRAT (trust) thus removing that asset from her estate, but still reserve an income stream from the asset (for some period of time). At the end of the GRAT term the asset passes (a gift) to the GRAT beneficiary, and because the donor reserved an income stream from the asset, the value of the gift (for gift tax purposes) is normally discounted.

Please consult with your Guardian Financial Representative if you have any questions concerning this document.

GEAR #2014-15287 Expiration: 12/31/2015

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