

WEALTH TRANSFER: SAFEGUARDING YOUR ASSETS IN A SHIFTING ESTATE AND INCOME TAX LANDSCAPE

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David Spano
Annex Wealth Management



Wealth Transfer – Both Family & Business - Involves tax planning

- Portfolio management should be tax efficient
- Financial planning should be tax savvy
 - Which means, first: avoid tax
 - If you can't avoid tax, defer it as long as possible
 - If you can't defer it, make sure you pay as little as possible (and no more)

Tax Planning For Those Over \$400,000 In Income

- Consider that your marginal tax bracket could increase from 37 to 39.6%
 - You might want to reverse and accelerate income/defer deductions – just know how much that paying tax early is going to “cost you”
- The benefits to itemized deductions could be limited to 28% (but the SALT limitation could be lifted).
 - This might cause you to take as many deductions into this year for bigger benefit if you are above the 28% bracket - use of the bunching technique (including DAFs) is one strategy

Tax Planning For Those Over \$400,000 In Income

- The OASDI payroll tax limit could be reinstated at \$400,000 of wages - evaluate your allocation between salary and distributions
- The benefits to maximize saving for retirement could be limited to 28%.
 - While the ability to defer tax by placing assets in a tax advantaged retirement vehicle is appropriate, under this change you might consider the Roth alternative more attractive (to never have to pay tax on the growth nor have to take RMDs)

Tax Planning For Those Over \$1,000,000 In Income

- Your marginal capital gain tax bracket could increase to 39.6%
- Traditional capital loss or gain harvesting takes on a new twist. Business owners are actually looking to close deals before the end of this year to avoid the potential of this issue.
- Don't forget: stay in your risk tolerance lane and rebalance as necessary. We have had a volatile market.



Tax Planning For Businesses

- For businesses, it's not always about taxes
 - You can transfer more wealth when you have the right organizational and governance plans in place
- Every business should have a succession plan. Every business owner will someday leave (even if by death)
 - Not planning for your goals and objectives in your next chapter could leave you lacking.
 - Sometimes you need to plan to keep more to transfer more!
- Secure your future before next generation.
 - Installment sales to defer tax and provide orderly transfer to next gen while keeping the financial resources you will need in retirement are an attractive strategy (if rates are to go up, you might consider electing out of installment sale treatment)

Tax Planning For Businesses

- Consider the QBI benefit might be lost if you have over \$400,000 in income
- Consider that the rate on C corporations could increase to 28% - the whole exercise on being a pass-through entity or a C corporation could have to be done again...
- Traditional bonus depreciation and Section 179 planning (the best strategy when trying to accelerate deductions) might have you electing straight-line to get the deduction when it is worth 7% more
 - These corporations might actually consider accelerating income

Tax Planning For Businesses

- Consider that there could be a corporate minimum tax on book income
- Consider that the GILTI tax could be doubled
- Many businesses have had to reinvent themselves – for those expenses qualifying: the R&D credit should not be overlooked

Tax Planning For Businesses

- If you/your business had a loss year in 2018-2020, consider CARES Act relief in carrying back losses, not otherwise allowed, to get immediate refund benefits (don't forget to analyze the rate benefit in looking back vs. looking forward).
 - Because President Trump declared all 50 states disaster areas – you may be able to amend your 2019 returns for additional losses because businesses can claim disaster losses on LAST year's tax return.

Tax Planning For Businesses - PPP

- PPP may be forgiven and not taxable, but the expenses aren't deductible
 - Make sure you apply for the forgiveness in the appropriate period of time
- Make sure you notify your bank and/or the SBA if business ownership is being transferred while a PPP loan is outstanding (covenants)
- Consider your accounting method (i.e., cash vs. accrual) and how the recognition of expenses/income might be impacted by expenses in one year and forgiveness of debt in a later year



Jennifer R. D'Amato
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Shifting Estate Tax Landscape

Jennifer R. D'Amato



Current Law:

- Estate/Gift exemption: \$10 million plus inflation (\$11.58 million in 2020; scheduled to be \$11.7 in 2021)
- GST exemption: Currently equal to estate/gift exemption
- “Step up” in basis occurs at death so capital gains are eliminated
- Current law sunsets January 1, 2026 and exemptions revert to \$5 million plus inflation

Possible Biden Tax Plan:

- Reduction of estate exemption to \$5 million or possibly \$3.5 million
- Gift exemption could be reduced to a lower amount
- Possible further reduction of GST exemption or limiting of Dynasty Trust duration
- Tax rate increasing to 45% (or higher?)
- Loss of Basis “Step up”
- Expect other attacks on estate planning strategies and increased regulatory compliance

Timing?

- How likely is this to happen retroactive to January 1, 2021?
- Result in Georgia special elections *could* result in a 50/50 Senate with Vice Presidential tie breaking vote.
- Likelihood of tax legislation passing with slim majority?
 - Need 60 votes to invoke cloture to end filibuster unless “reconciliation” is used—which can only happen 3 times a year
 - What if filibuster is eliminated?
- Political realities
- Practical realities
- Extremely unlikely, but possible



What to do?

- Clients should not transfer large amounts without careful, deliberate consideration
 - Change in tax law should not be primary motivator
 - Impact on change of remaining exemption post gift and change in law—claw back?
 - Marital property/ “gift splitting” issues
- Considerations:
 - Comfort level with giving assets away
 - Overall wealth transfer objectives and planning to date
 - Cash flow needs—review carefully
 - Likelihood of additional tax changes before death



Possible Structures

- Outright Gifts
- Intentionally Defective Grantor Trusts (“IDGTs”)
- Spousal Access Trusts (“SLATs”)
- Dynasty Trusts—power of GST exemption
- Grantor Retained Annuity Trusts (“GRATs”)
- Charitable Trusts—lead and remainder (“CLTs” and “CRTs”)



Important Tools

- Valuation Discounts
 - Critical in planning for transfers of business interests
 - Discounts for non-voting or minority interests
 - Discounts for lack of marketability
 - Importance of inter-vivos planning
- Depressed Covid-Related Valuations (in some industries)
- Interest Rate Assumptions—Estate “Freeze”
 - Sales via installment note
 - Loans via installment note
 - Annuity/Unitrust calculations
 - Cash flow



Planning Pointers

- Flexibility Is Key—no one has a crystal ball
- Tools To Add Flexibility:
 - limited powers of appointment
 - broad distribution standards—-independent trustee
 - substitution powers
 - loans
 - trust protectors
 - non-judicial settlement agreements
 - decanting
 - court modifications



Thank You!

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Questions?



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