Schulte Roth&Zabel

Alert

Current Lifetime Estate Planning Opportunities in Light of Possible 2021 Tax Law Changes and Current Low Interest Rates

October 2, 2020

Preparing for Possible 2021 Tax Law Changes to Exemption Amounts

Current Tax Law. The current federal estate, gift and generation-skipping transfer ("GST") tax exemptions allow an individual to transfer $11.58 million during his or her lifetime or at death, reduced by lifetime gifts already made that did not qualify for the annual exclusion or another exemption from gift tax. These exemptions are scheduled to expire at the end of 2025, absent further legislation.

Possible 2021 Tax Law Changes. If the 2020 elections result in Democratic control of the presidency and Congress, these exemptions could be reduced. It has been reported that Vice President Biden may seek to reduce the estate and GST tax exemptions to as low as $3.5 million and the gift tax exemption to as low as $1 million. Also, even without changes in the presidency and Congress, these exemptions could be reduced in order to cover increasing federal deficits. Any reduction in these exemptions could be retroactive to as early as Jan. 1, 2021.

2020 Planning Opportunities. If you have not yet used all of your gift and GST tax exemptions, we strongly recommend that you consider making lifetime gifts, in trust or outright, before 2020 year-end. Today, a married couple establishing GST-exempt trusts can shield assets worth up to $23.16 million (plus all future appreciation) from wealth transfer taxes for approximately 100 years in New York or longer (or in perpetuity) in certain other jurisdictions. One option is for married couples to establish Spousal Lifetime Access Trusts ("SLATs") for each other and their descendants, by which they can remove assets from their taxable estates while maintaining access to those assets (through the spouses as beneficiaries) if their financial circumstances change. SLATs are one of several planning opportunities we can discuss as you consider making lifetime gifts before the 2020 year-end. We can also discuss your individual circumstances and whether there are specific considerations for where you live (for instance, the gift tax in Connecticut).

2020 Timing Considerations. We are already experiencing an increased demand from our clients with respect to these planning opportunities. We understand that appraisers are similarly busy valuing assets and that bankers anticipate a rush on account opening requests that may become hard to satisfy as the end of the year approaches. In order to ensure that you receive the necessary legal, appraisal and banking assistance before 2020 year-end, we strongly recommend that you implement these planning techniques as soon as possible.

Taking Advantage of Current Low Interest Rates

Creating New Short Term GRATs. Possible 2021 tax law changes may significantly limit the advantages of Grantor Retained Annuity Trusts ("GRATs"), including by imposing minimum terms and minimum retained interests which would make GRATs less beneficial. Because of these possible changes and since interest rates are currently so low, this is a good time to create and fund a new GRAT. The donor of a GRAT gifts assets that he or she feels will appreciate in the trust while retaining the right to receive an annuity payment from the GRAT for a specified period of time. At the conclusion of that period, the remaining assets in the GRAT pass to specified beneficiaries — usually the donor's descendants (outright or in trust) — free of any gift tax. A GRAT is successful when the appreciation of and income from the assets in the GRAT exceeds the IRS's "hurdle rate," which is only 0.4% for GRATs created in October 2020.

Low Interest Intra-Family Loans. Making loans to individuals or trusts is a simple but effective way to shift "excess" income and appreciation to other family members. The IRS minimum rate varies based on the term of the loan. (The IRS minimum rate for three to nine-year loans made in October 2020 is 0.38%.) You can currently make loans at a very low rate, and if the loan is structured with a balloon principal payment at the expiration of the term, all of the principal can remain invested during the term of the loan, maximizing the amount of "excess" income and appreciation that can pass to family members in a tax-efficient way.

Refinancing Existing Promissory Notes. Because interest rates are now very low, it may be advantageous to refinance existing promissory notes to current rates.

Please contact your Schulte Roth & Zabel attorney at your earliest convenience if you wish to discuss these or other estate planning opportunities as they relate to your specific financial and personal situation.

Schulte Roth & Zabel
New York | Washington DC | London
www.srz.com

This communication is issued by Schulte Roth & Zabel LLP for informational purposes only and does not constitute legal advice or establish an attorney-client relationship. In some jurisdictions, this publication may be considered attorney advertising. ©2020 Schulte Roth & Zabel LLP. All rights reserved. SCHULTE ROTH & ZABEL is the registered trademark of Schulte Roth & Zabel LLP.