

Estate Planning Opportunities Amidst COVID-19 Uncertainty

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Client Advisory

April 9, 2020 by Caroline H. Fischer, Alison Powers Herman and Karen T. Schiele

With the COVID-19 pandemic and volatile global markets dominating the headlines, many people are justifiably concerned about the health, safety and security of themselves and their families. While this is a troubling and uncertain time, from an estate planning perspective, there is opportunity to take advantage of low interest rates, diminished asset values and anticipated future market recovery. Below are a few opportunities to consider in this uncertain time.

Review and Update Existing Estate Planning Documents

Now is a good time to review current estate planning documents, including wills, revocable trusts, powers of attorney, health care directives and beneficiary designations to ensure that they reflect current wishes. In response to quarantine and social distancing guidelines, many states, including New York, have emergency orders in place allowing remote notarization and witnessing of documents. Many documents can therefore be executed without the need to come to our offices or have witnesses or notaries come to your home or office.

Consider Taking Advantage of Wealth Transfer Techniques

The markets have seen extreme volatility in recent weeks and interest rates have dropped to historic lows. This low interest rate environment coupled with depreciated asset values and historically high federal estate, gift and generation-skipping transfer ("GST") tax exemptions presents unique opportunities to transfer wealth while minimizing tax implications.

1. Gifting Undervalued Assets

With many securities reaching multi-year lows, consider transferring undervalued assets to descendants or other intended beneficiaries. The amount of federal exemption applied against the gift will be lower than if the asset were transferred at a higher value, leaving more exemption available for future gifts or for transfers at death. Because the income tax basis received by the donee is generally the income tax basis in the hands of the donor, a gift of undervalued assets should be neutral from an income tax perspective, though there are instances in which the basis rule may be different and it is important to consult with tax professionals to determine the optimal choice of undervalued assets to gift.

2. Grantor Retained Annuity Trusts

This may be an ideal time to create a grantor retained annuity trust, or "GRAT." A GRAT is an irrevocable trust whereby the grantor transfers assets to the trust and receives annuity payments for a period of years, based on the interest rate under Section 7520 of the Internal Revenue Code at the time of the transfer. In the most common type of GRAT, often referred to as the "Zeroed-Out" or "Walton" GRAT and pioneered by lawyers at Carter Ledyard, the present value of the annuity payments is calculated to equal the value of the property transferred into the GRAT, thereby allowing the appreciation in value in excess of the annuity payments to be transferred to the remainder beneficiaries as a tax-free gift.

The Section 7520 rate is 1.2% for the month of April 2020. By funding a GRAT with assets that are expected to appreciate in value in excess of 1.2%, a grantor can capitalize on current low interest rates and diminished asset values and transfer wealth to beneficiaries free from gift tax.

This would also be a good time to review the performance of existing GRATs to determine if annuity payments should be rolled over into new GRATs or if their values can be locked in to insure some level of success before further declines in value occur. You may also wish to consider rolling over an existing GRAT's annuity payments to fund a new GRAT and take advantage of a lower Section 7520 rate and lower asset values and to reset the period for appreciation in value. Also, if a GRAT has been successful but has not yet reached maturity, consider swapping assets in an existing GRAT for cash, bonds, or other stable assets to lock in the current value of the assets and minimize further decline.

3. Intra-Family Transactions

Loans to younger generations are another way to capitalize on the current low interest rates for the purpose of wealth transfer. To avoid an intra-family loan being characterized as a gift, the loan must bear interest at a rate equal to or greater than the relevant Applicable Federal Rate. These rates are now extremely low. The April 2020 Short-Term Applicable Federal Rate, applicable to loans with terms under three years, is 0.91%; the April 2020 Mid-Term Applicable Federal Rate, applicable to loans with terms of three to under nine years is 0.99%; and the April 2020 Long-Term Applicable Federal Rate, applicable to loans with terms longer than nine years, is 1.43% or 1.44%, depending on the frequency of compounding.

Existing intra-family loans may also be eligible to be refinanced at the current lower interest rates.

4. Sales to Intentionally Defective Grantor Trusts

An Intentionally Defective Grantor Trust ("IDGT") is an irrevocable trust specifically designed to make the income of the trust taxable to the grantor while excluding the trust's assets from the grantor's estate. The grantor can sell assets to the IDGT in exchange for a promissory note at the Applicable Federal Rate for the desired term. Asset appreciation in excess of the relevant Applicable Federal Rate is passed to the beneficiaries of the IDGT as an estate- and gift-tax-free transfer. If GST tax exemption is properly allocated, such asset appreciation can also be transferred free of GST tax. Furthermore, any income tax on income earned by the IDGT reduces the grantor's taxable estate, passing extra wealth to beneficiaries.

5. Grantor Trusts with Power of Substitution

Many grantor trusts are drafted to allow the grantor the power to substitute assets in the trust for other property of an equivalent value. The grantor can swap out from the trust assets of a stable nature or assets that are not expected to appreciate in value for assets that are expected to rebound or appreciate in value, thereby allowing the appreciation to occur inside the trust.

Summary

Although current circumstances are challenging and evolving, many opportunities exist to take advantage of a future recovery. We are available to discuss how the above techniques and other strategies can be applied to our clients' unique estate planning needs so as to maximize the benefit of the opportunities this current environment provides.

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For more information concerning the matters discussed in this publication, please contact a member of Carter Ledyard's [Trusts & Estates Department](#), or your regular Carter Ledyard attorney.

Carter Ledyard has created a COVID-19 Response Group to monitor the evolving legal landscape, address client questions and ensure client compliance with the laws and regulations issued in response to the COVID-19 pandemic. The Carter Ledyard COVID-19 Response Group consists of **Jeffery S. Boxer** (212-238-8626, boxer@clm.com), **Judith A. Lockhart** (212-238-8603, lockhart@clm.com), **Bryan J. Hall** (212-238-8894, hall@clm.com), **Alexander G. Malyshev** (212-238-8618, malyshev@clm.com), **Melissa J. Erwin** (212-238-8622, erwin@clm.com), and **Leonardo Trivigno** (212-238-8724, trivigno@clm.com). Clients should contact the attorneys listed above or their regular CLM attorney for any questions concerning legal obligations arising from the COVID-19 pandemic.

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