Unique 2012 Estate and Gift Tax Opportunities

The current U.S. estate and gift tax exclusion amounts ("exclusions") are as high as they ever have been. In 2012, a U.S. individual can give away $5,120,000 without paying any U.S. gift tax. For a married couple, the aggregate amount is $10,240,000. Currently, the maximum U.S. estate and gift tax rates are 35%. New York levies no gift tax but imposes a graduated estate tax up to 16% on New York taxable estates over $1,000,000.

Unless federal legislation is enacted before December 31, 2012, the $5,120,000 tax exclusions will revert to $1,000,000 in 2013, and the maximum U.S. estate and gift tax rate will increase to 55%. The President's 2013 budget proposes that the gift tax exclusion be reduced to $1,000,000 per person, whereas the estate and GST tax exclusions would be lowered to $3,500,000. While no one can predict with any confidence what the new transfer tax exclusions and rates will be, we encourage clients to consider the unique planning opportunities in 2012.

If a person makes a $5,120,000 gift today, there would be no U.S. gift tax. [1] In addition, the post-gift income from and any future appreciation on the gift would escape U. S. estate tax. For persons resident in states such as New York, the gift would not be subject to state gift tax and would also escape state estate tax. Set forth below are some illustrations of the possible benefits of 2012 gifts.

If a New York person dies in 2012 with a taxable estate of $11 million, his or her U.S. estate tax would be $1,628,600 and New York estate tax would be $1,226,800, for total estate taxes of $2,855,420, passing $8,144,580 to the family. [2]

If the same person (having not made any prior taxable gifts) makes a $5,000,000 gift in 2012, his total estate (U.S. and New York State) taxes (assuming 2012 rates) would be $2,390,020, for a net family benefit of $8,609,980 or a tax savings of $465,400. If the person dies in 2013, assuming no new legislation, we estimate the total estate taxes would be $3,350,000 for a net benefit of $7,650,000 or a tax savings of $2,045,000.

In addition, future estate tax on a gift made to descendants in trust can be deferred for many years through a "Dynasty Trust." While transfers in trust for more than one generation may incur a generation-skipping tax ("GST"), in 2012 there is also a $5,120,000 exemption from GST. Like the estate and gift tax, the GST exemption is scheduled to revert to $1,000,000 in 2013.[3]

Gifts can be outright or in trust. They can consist of cash, securities, real property or tangible personal property. There are myriad ways to structure gifts, including techniques to leverage the potential estate and gift tax savings, such as valuation discounts or sales to a grantor trust and techniques in which the donor retains an interest in the gift, such as a grantor retained annuity trust ("GRAT") or a qualified personal residence trust ("QPRT").[4] The recommended structure will depend on the individual's circumstances.

Please contact us if you would like to discuss how you might take advantage of this opportunity.

[1] The basic exclusion for 2012 is $5 million which when indexed for inflation becomes $5,120,000. This figure assumes U.S. citizenship and does not account for previous taxable gifts.

[2] Assuming death after 2012 and using 2001 rates which will be in effect in 2013 until legislation passes, the total estate taxes would be $5,395,000 for a net benefit of $5,605,000.

[3] Indexed for inflation.

[4] The donor must survive the term of the GRAT or QPRT to achieve the potential estate tax savings.

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