INSIGHT ON ESTATE PLANNING

A win-win proposition
A charitable remainder trust benefits you and your favorite charity

When to elect the alternate valuation date

Do you know when an FBAR must be filed?

ESTATE PLANNING PITFALL
You haven't made formal funeral arrangements

JUNE/JULY 2019

LEGACY PROTECTION LAWYERS, LLP

100 - 2nd Avenue South, Suite 900 • St. Petersburg, Florida 33701
T: 727.471.5868 F: 727.498.5696

www.LegacyProtectionLawyers.com

A win-win proposition

A charitable remainder trust benefits you and your favorite charity

Are you a multitasker? If so, you may appreciate an estate planning technique that can convert assets into a stream of lifetime income, provide a current tax deduction and leave the remainder to your favorite charity — all in one fell swoop. It's the aptly named charitable remainder trust (CRT).

CRTs have been around for decades, and they continue to be a viable estate planning strategy in the wake of the Tax Cuts and Jobs Act (TCJA) and other recent tax legislation.

A CRT in action

For starters, you can set up one of two CRT types (see "2 types of CRTs" on page 3) and fund it with assets you own. The trust then pays out income to the designated beneficiary or beneficiaries — for example, the trust creator or a spouse — for life or a term of 20 years or less. Alternatively, if certain requirements are met, you can choose to have income paid to your children, other family members or an entity.

If it suits your needs, you may postpone taking income distributions until a later date. In the meantime, the assets in the CRT (ideally) continue to appreciate in value.

Typically, a CRT is funded with income-producing assets, such as real estate, securities and even stock in your own company. (Note: S corporation stock can't be used for this purpose.) These assets may be supplemented by cash deposits or the transfer can be all cash.

When you transfer assets to the CRT, you qualify for a current tax deduction based on several factors, including the value of the assets at the time of transfer, the ages of the income beneficiaries and the Section 7520 rate. Generally, the greater the payout, the lower the deduction.

Because the TCJA limits certain itemized deductions and increases the standard deduction, consider transferring assets in a year in which you expect to itemize. Furthermore, the deduction for appreciated assets is typically limited to 30% of your adjusted gross income (AGI). However, if the 30% of AGI limit applies, you can carry forward the excess for up to five years.

2 types of CRTs

There are essentially two types of charitable remainder trusts: the charitable remainder annuity trust (CRAT) and the charitable remainder unitrust (CRUT). No matter which version you use, the income beneficiary must be entitled to annual payments for his or her lifetime, or for a fixed period of no more than 20 years. In addition, other tax law requirements apply.

With a CRAT, the income beneficiary receives a fixed amount of income year in and year out, regardless of the investment performance of the trust assets. Those who have already retired and want the security of a known income amount often prefer this method. The trust is usually funded with securities and cash.

Tax law requires the fixed payments of a CRAT to equal no less than 5% of the initial value of the trust assets.

Unlike the CRAT, which pays out a fixed amount, CRUT payments are based on the investment performance of the underlying assets. Therefore, the amount of your annual income will fluctuate year to year. With a CRUT, a payment of a percentage of not less than 5% of the value of the trust assets must be paid each year.

In either event, a trust won't qualify as a CRT if the annual payout exceeds 50% of the value. Furthermore, it must be clear that the charity is expected to receive at least 10% of the donated assets.

A matter of control

An important decision relating to a CRT is naming the trustee to manage its affairs. The trustee should be someone with the requisite financial acumen and knowledge of your personal situation. Thus, it could be an institutional entity, a family member, a close friend or even you.

Because of the significant dollars at stake, many trust creators opt for a professional, perhaps someone who specializes in managing trust assets. If you're leaning toward this option, interview several candidates and consider factors such as experience, investment performance and level of services provided.

If you decide to take on the task yourself, consider using a third-party professional to handle most of the paperwork and provide other support. Frequently, a CRT is supplemented by another trust or a life insurance policy to "make up the difference" to children when the remainder goes to charity.

During the CRT's term, it's the trustee — not the charity — that calls the shots. The trustee is obligated to adhere to the terms of the trust and follow your instructions. Thus, you still maintain some measure of control. In fact, you may retain the right to change the trustee if you become dissatisfied or designate a different charity to receive the remainder assets.

Is a CRT right for you?

The short answer is that it depends on your specific circumstances. Be aware that a CRT is irrevocable. In other words, once it's executed, there's no going back and you can't make other changes. So, you must be fully committed to this approach. Contact your estate planning advisor for additional details. •

When to elect the alternate valuation date

The stock market goes up, the stock market goes down. Just consider recent history. In 2018, stocks took one of their worst beatings since the Great Depression, with the Dow Jones Industrial Average (DJIA) falling 5.6% for the year and the S&P 500 down 6.2%. But the markets rebounded early in 2019, with both the DJIA and S&P 500 posting gains of more than 7% during the first six weeks of this year.

Of course, you likely can expect more stock market volatility in the near future. Not only can this affect your net worth, and perhaps your lifestyle; it might also have an impact on estate taxes. Specifically, your family might owe an unexpected tax bill if a death occurs before the value of stocks or other assets drops precipitously.

Selecting a valuation date

Under the Tax Cuts and Jobs Act (TCJA), the federal estate tax exemption has been doubled from $5 million to $10 million, indexed for inflation, effective for 2018 through 2025. The indexed amount for 2019 is $11.4 million (up from $11.18 million in 2018). At the same time, the TCJA retains the top federal estate tax rate of 40%, as well as the unlimited marital deduction.

Typically, assets owned by the deceased are included in his or her taxable estate, based on their value on the date of death. For instance, if an individual owned stocks valued at $1 million on the day when he or she dies, the stocks are included in the estate at a value of $1 million.

Despite these favorable rules, a small percentage of families still must contend with the federal estate tax. However, the tax law provides some relief to estates that are negatively affected by fluctuating market conditions. Instead of using the value of assets on the date of death for estate tax purposes, the executor may elect an "alternate valuation" date of six months after the date of death. This election could effectively lower an estate's federal estate tax bill.

Take a simplified example where the value of the taxable estate exceeds the exemption amount by $2 million. If the estate's value drops to $500,000 above the exemption amount, the family would save $600,000 in federal estate tax (that is, $1.5 million × 40%).

Election requirements

This special election is permissible only if the total value of the gross estate is lower on the alternate valuation date than it was on the

date of death. Of course, the election generally wouldn't be made otherwise. If assets are sold after death, the date of the disposition controls. The value doesn't automatically revert to the date of death.

Furthermore, the ensuing estate tax must be lower by using the alternate valuation date than it would have been using the date-of-death valuation. This would also seem to be obvious, but that's not necessarily true for estates passing under the unlimited marital deduction or for other times when the estate tax equals zero on the date of death.

Take note that the election to use the alternate valuation date must be made within one year of the estate tax return filing date. Generally, an estate tax return is due within nine months of the date of death. This provides a small window of opportunity for electing the alternate valuation date when the value of assets has declined.

All-or-nothing proposition

The alternate valuation date election can save estate tax, but there's one potential drawback: The election must be made for the entire estate. In other words, the executor can't cherry-pick stocks to be valued six months after the date of death and retain the original valuation date for other stocks or assets. It's all or nothing.

This could be a key consideration if an estate has, for example, sizable real estate holdings in addition to securities. If the real estate has been appreciating in value, making the election may not be the best approach. The executor must conduct a thorough inventory and accounting of the value of all assets.

Account for state estate taxes

It's important to be aware of the rules for any applicable state death taxes. This could tilt things one way or another. Fortunately, you don't have to decide matters on your own. Contact your estate planner for guidance concerning your family's situation. •

Do you know when an FBAR must be filed?

If you have a financial interest in, or signature authority over, foreign financial accounts with an aggregate value exceeding $10,000 *at any time* during the calendar year, you must file FinCEN Form 114, "Report of Foreign Bank and Financial Accounts" (FBAR). The Financial Crimes Enforcement Network (FinCEN) and the IRS have been stepping up enforcement of foreign account reporting requirements. Thus, it's important to closely follow compliance rules to avoid penalty.

Foreign financial accounts defined

Financial accounts include bank accounts, securities and brokerage accounts, and other

One can also hold a financial interest in a foreign account through a business entity or trust. Under the FBAR rules, a U.S. person who owns, directly or indirectly, more than 50% of a corporation's voting power or total value is deemed to hold a financial interest in the corporation's foreign financial accounts. Similar rules apply to owners of more-than-50% capital or profits interests in partnerships and to majority owners of other types of entities.

accounts maintained with a financial institution or "other person performing the services of a financial institution." They also include mutual funds, insurance and annuity funds with cash values, commodity futures or options accounts, and certain retirement accounts.

Foreign accounts are those located outside the United States, regardless of the financial institution's nationality. So, for example, an account maintained with a branch of a U.S. bank physically located outside the United States is a foreign financial account, while an account maintained with a branch of a foreign bank physically located in the United States isn't.

The owner or legal titleholder of an account has a financial interest in it, regardless of whether he or she enjoys any benefits from it. And one who uses an agent, attorney or other representative to acquire an account has a financial interest even without legal title.

Suppose, for example, that Dennis, a U.S. citizen living abroad, agrees to hold $20,000 in his foreign bank account for his brother, John, also a U.S. citizen. The brothers each have a financial interest in the account and must file FBARs: Dennis as the legal owner, and John as the beneficial owner of the funds.

Financial interests in accounts held in trust are attributed to a U.S. person who 1) has an ownership interest in a grantor trust, 2) has a *present* beneficial interest in more than 50% of the trust assets or 3) receives more than 50% of the *current* trust income. Beneficiaries are relieved of their FBAR filing obligations, however, if the trust or its trustee has a separate FBAR filing obligation.

Anytime you designate another person to act on your behalf, you may trigger additional FBAR reporting obligations.

FBAR reporting obligations also extend to U.S. persons with signature authority over foreign financial accounts. These may include power of attorney holders, officers or employees of entities that hold foreign accounts, trustees of trusts that hold foreign accounts and executors of estates that hold foreign accounts.

FBAR reporting and your estate plan

In an estate planning context, foreign account reporting obligations can arise in a variety of ways. Anytime you designate another person to act on your behalf or transfer interests in your assets to other people or entities, you may trigger additional FBAR reporting obligations.

Avoid the penalties

Often misunderstood or overlooked, the FBAR can be a costly trap for the unwary. If you own or control foreign financial accounts, consult your estate planning advisor to discuss your FBAR and other reporting obligations and their potential impact on your estate plan. •

ESTATE PLANNING PITFALL

You haven't made formal funeral arrangements

It's difficult for many people to think about their own mortality, and it's not surprising to learn that many put off planning their funerals. Unfortunately, this lack of planning can result in emotional turmoil for surviving family members when someone dies unexpectedly.

Also, a death in the family may cause unintended financial consequences. Why not take matters out of your heirs' hands? By planning ahead, as much as it may be disconcerting, you can remove this future burden from your loved ones.

First, make your funeral wishes clearly known to other family members. This typically includes instructions about where you are to be buried or cremated, if you prefer a formal or religious ceremony and even what clothing you will be buried in. It may also cover a memorial service in lieu of, or supplementing, a funeral. If you don't have a next of kin, or would prefer someone else to be in charge of funeral arrangements, you can legally appoint another representative.

There's a division of opinion in the financial community as to whether you should prepay funeral expenses. If you prepay and opt for a "guaranteed plan," you lock in the prices for the arrangements, no matter how high fees may escalate before death. With a "nonguaranteed plan," prices aren't locked in, but the prepayment accumulates interest that may be put toward any rising costs.

At the very least, prepaying expenses avoids any mad scramble to locate and access funds that would be needed to pay for the funeral.

This publication is distributed with the understanding that the author, publisher and distributor are not rendering legal, accounting or other professional advice or opinions on specific facts or matters, and, accordingly, assume no liability whatsoever in connection with its use. ©2019

Knowledgeable, Responsive, Reliable, Diligent and Compassionate.

Our boutique law firm consists of five practicing estate and trust, litigation, tax and business attorneys. Our philosophy is to provide the highest levels of legal counsel, expertise and service to our clients.

Knowledgeable, **Responsive**, **Reliable**, **Diligent** and **Compassionate** are the words most often heard from our clients when they describe our firm. ***Knowledgeable*** because our team is intelligent and well-informed and has an understanding of this area of the law that comes with experience or education. ***Responsive*** because we are always quick to react to and answer our client's questions. ***Reliable*** because we are consistently good in our quality of work or performance and thus able to be trusted. ***Diligent*** because we work hard and are attentive and persistent in doing our job. ***Compassionate*** because we have a strong desire to help our clients.

Approximately half of our attorneys practice in the areas of tax, estate and trust planning and administration, asset protection and business exit planning. The rest of our attorneys focus on trust, estate, and guardianship litigation. By limiting our law practice to these areas, we actually can provide our clients with more value. Our combination of expertise means we can plan and protect our client's family and business wealth so that they can prosper.

We do things differently. We make the complex simple, initiate the uncomfortable but necessary conversations and our entrepreneurial spirit drives us to deliver superior results. Fascinated by innovation, we strive to redefine the way we practice law every day.

We invite you to explore our website at **www.LegacyProtectionLawyers.com** or **contact us directly** at (727) 471-5868 to learn more about our firm and how we can help you.