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REDUCTION OF FEDERAL TRANSFER TAX EXEMPTIONS AND ELIMINATION OF KEY ESTATE PLANNING TECHNIQUES MAY BE IMMINENT

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Proposed legislation contained in the infrastructure bill would result in significant, and in some cases immediate, changes to estate planning opportunities. The details of what legislation will be passed have yet to be finalized, but some of the pending proposals require consideration and possible prompt action. The acceleration of the reduction of the currently generous Federal transfer tax exemptions, which would take effect at year end, and the changes to the grantor trust rules, which would take effect upon enactment of the legislation, warrant particular attention. In considering gifting opportunities, clients should remain mindful that estate and gift tax savings may come at the price of a lost capital gains tax savings at death.

UTILIZE CURRENT FEDERAL GIFT AND GST EXEMPTIONS

If passed in its current form, the legislation will reduce the Federal gift, estate, and generation skipping transfer (“**GST**”) tax exemptions from \$11.7 million per individual to approximately \$6 million per individual effective January 1, 2022. Clients who have not yet taken advantage of the generous Federal transfer tax exemptions should consider making a gift of the full Federal exemption from gift taxes (less lifetime exemption used) before the end of 2021 or as soon as possible if the gift will be to a grantor trust, as explained in greater detail below. For a Connecticut resident, such a gift would generate a Connecticut gift tax of \$528,000 on the difference between the Federal exemption of \$11.7 million and the Connecticut gift tax exemption of \$7.1 million (unless the gift is of real or tangible property located outside of Connecticut).

Clients interested in locking in the full \$11.7 Federal gift (and possibly GST) exemption should consider the following options¹:

- An unmarried individual with children or more remote descendants could make a gift of \$11.7 million (less lifetime exemption used) to a trust of which children (and more remote descendants) are beneficiaries.
- A married couple could choose between making:
 - a. A gift by one spouse of \$23.4 million (less lifetime exemption used) to a trust of which children (and more remote descendants) are beneficiaries and splitting gifts on timely filed 2021 gift tax returns.
 - b. A gift by (i) one spouse of \$11.7 million (less lifetime exemption used) to a trust of which the other spouse and children (and more remote descendants) are beneficiaries (commonly referred to as a spousal lifetime access trust (“**SLAT**”)) and (ii) the other

¹ In the options presented above, as an alternative to a gift to a trust, a client could make a gift to individuals, outright and free of trust.

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spouse of \$11.7 million (less lifetime exemption used) to a trust of which only children (and more remote descendants) are beneficiaries.

- c. A gift by one spouse of \$11.7 million (less lifetime exemption used) to either (i) a SLAT or (ii) a trust of which only children (and more remote descendants) are beneficiaries.

IMPLEMENT PLANNING WITH GRANTOR TRUSTS

Under the proposed new rules, grantor trusts would no longer be tax-effective vehicles for the transfer of wealth since (i) any trust property remaining in a grantor trust at death would be included in a grantor's taxable estate and (ii) distributions to trust beneficiaries other than the grantor or the grantor's spouse would constitute taxable gifts. The rules affecting grantor trusts would, if passed as currently formulated, apply to grantor trusts created on or after the date on which the legislation is enacted. While grantor trusts established and funded prior to the passage of the new legislation would not be subject to the new rules (except possibly for the rules regarding sales and exchanges), to the extent that a pre-existing grantor trust is funded with gifts made after enactment of the new rules, the new rules would apply to a portion of that trust.

Clients may wish to implement those estate planning techniques that involve grantor trusts before the new rules become effective by undertaking one or more of the following actions:

- Transfer remaining Federal gift tax exemption (as explained above) to an existing grantor trust or to a new grantor trust so that trust income taxes can continue to be paid by the grantor without gift tax consequences and so that, depending on final legislation, grantor can engage in sales and loans with the trust without adverse income tax consequences.
- Establish a SLAT (described above), grantor retained annuity trust (“**GRAT**”), or qualified personal residence trust (“**QPRT**”).
- Fund existing annual exclusion trusts that are grantor trusts with 2021 annual exclusion gifts as soon as possible if these gifts have not already been made.
- If a life insurance trust is in existence to which annual gifts are made for premium payments, fund the trust with sufficient assets to make future premium payments so that no additional contributions will have to be made to the trust following enactment of the new rules.

CONTACT US TO DISCUSS YOUR SITUATION

If you are interested in discussing the options set forth above and implementing a gift plan, please contact:

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