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Tax update and estate planning trends

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Technical concepts

Limited new “news”



Heckerling highlights

- SECURE Act
- Anti-Clawback regulations
- Grantor vs. Non-grantor trust planning
- Powell Case – Section 2036 retained interest
- Wealth tax proposals by Democratic candidates
- Section 199A - Qualified Business Income Deduction regulations
- Section 1400Z-1 - Qualified Opportunity Funds and Final Regs.
- Kress Case – valuation case allowing earnings to be tax affected
- ING (incomplete non-grantor) Trusts



SECURE Act - Setting Every Community Up for Retirement Enhancement

Accelerates taxes on inherited IRAs

- Entire inherited IRA must be distributed within 10 years of owner's death.
 - Effective date – for those who pass away after 12/31/19.
 - Exceptions – spouse, minor child, disabled or chronically ill person or a person not more than 10 years younger than the participant.
- IRA owners can contribute after 70 ½
- RMDs start at age 72



Anti-Clawback regulations

- Proposed regulations issued 11/23/2018. Final regulations issued almost exactly one year later.
- Portability made clear
- GST exemption – late allocation is allowed of the increase amount.



Grantor vs. Non-grantor Trust planning

- Installment Sales to Grantor Trusts
 - What happens if the Grantor passes during the term of the note?
- Spousal Grantor Trusts
- GRATs
- Basis step-up planning – exchanging low basis assets in the trust for cash – high basis assets.
- Tax re-imbursement clause and Rev. Rul. 2004-64
- BDOTS – Beneficiary Deemed-Owned Trusts – Sec. 678



Powell Case

- Facts – incapacitated and hospitalized mother, a son acting as successor trustee of revocable trust and her durable power of atty, \$10 million of marketable securities transferred to a limited partnership for a 99% interest, death of mother within six days.
- Sec. 2036(a)(2) –mother, in conjunction with children, could dissolve the partnership which was considered a “right” to direct the disposition of the partnership assets.
- Fiduciary duties determined to be illusory
- Issues to avoid – bad facts, son was trustee and power of attorney (other son’s ½ ownership not acknowledged).
- Outline provided by Nancy Henderson



Other...

- Wealth tax proposals by Democratic candidates – possibly unconstitutional.
- Section 199A - Qualified Business Income Deduction regulations
- Section 1400Z-1 - Qualified Opportunity Funds and Final Regs.
- Kress Case – valuation case allowing earnings to be tax affected.
- ING (incomplete non-grantor) Trusts
- Private foundation excise tax changed to 1.39% - Consolidated Appropriations Act, 2020 & Private Foundation Excise Tax



Today's landscape

110,000

*federal estate tax
returns filed in 2001*

vs.

13,000

*federal estate tax
returns filed in 2017*

(and that's before TCJA)

Sources: You Call it Practice, I Call It a Business, Romanoff, Robert Alan



Current estate tax laws

- Estate tax assessed at 40% of the value of the estate exceeding the estate tax exemption for year of death.
- TCJA doubled the exemption from \$5 million (inflation adjusted) to \$10 million (inflation adjusted).
 - 2019 exemption was \$11,400,000 per person
 - 2020 exemption is \$11,580,000 per person
 - Less than 0.2% of Americans will be subject to the federal estate tax*
- Doubled exemption scheduled to sunset 1/1/2026.
- Will revert to \$5 million, adjusted for inflation.
- Democratic control of White House and Congress after 2020 elections could mean earlier rollback of exemption.

Sources: Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. No. 107-16, 115 Stat. 38 (2001).



Transfer Tax System

Transfer Tax System	Gift Tax	Estate Tax	GST Tax
Tax Rates (2019)	40%	40%	40%
Marital Deduction	Unlimited	Unlimited	Unlimited/N/A
Annual Exclusion	\$15,000	N/A	\$15,000 (more strict)
Medical / Education	Unlimited	N/A	Unlimited
Charity	Unlimited	Unlimited	Unlimited
Applicable Exclusion	\$11,580,000	\$11,580,000	\$11,580,000



Planning opportunity

- Gifting the “excess” exemption while it’s still available will save significant estate taxes if a client dies after the exemption has been reduced.
- There is currently \$5.88 million of “excess” exemption; if gifted before sunset, this results in \$2.352 million in estate tax savings (\$4.704 million if spouse gifts exemption as well).
 - Estate tax savings are enhanced with discounting and post-gift appreciation.
- Regulations have been made final that confirm that a taxpayer’s use of the temporarily enhanced gift tax exemption will not result in recapture or clawback when/if the exemption declines.
- Income tax basis concerns



Non-technical concepts

The changing demographics of our
work force and clients



The changing landscape of our business



The “Great Wealth Transfer”

- \$68 trillion is estimated to transfer in the next 25 years.
- Youngest boomers are 55 and oldest are 73 (\$30-\$40 trillion in assets).
- Millennials have different priorities:
 - Convenience, transparency and enhanced communication.
- Women likely to inherit twice.

Sources:

<https://www.cnn.com/2019/10/21/what-the-68-trillion-great-wealth-transfer-means-for-advisors.html>

<https://www.forbes.com/sites/forbesfinancecouncil/2018/05/15/five-predictions-on-the-future-of-wealth-management/#4ab967cf3c6d>



Statistics – Thomas Rogerson – GenLeg Co.

- 70% of all wealth transfers fail in one generation.
- 97% of all multi-generational wealth transfers fail within three generations.
- Why do 97% fail?
 - 60% of failure due to a lack of communication and trust within the family.
 - 25% of failure is due to unprepared heirs.
 - 10% of failure is due to no clarity of family purpose and individual place.
 - Less than 5% of failure is due to failures in financial planning, taxes and investments.

Sources: Williams and Pressier



Changing demographics

- 80%+ of inheritors will look for new advisors*
- 66% of children fire their parents' advisors^
- Only 22% of wealth advisors are under 40
- Only 40% of advisors have a succession plan
- 35% of client interactions take place on a mobile device#
- Less than 0.2% of Americans subject to the federal estate tax**

Sources:

* <https://www.cnbc.com/2019/10/21/what-the-68-trillion-great-wealth-transfer-means-for-advisors.html>

^ <https://www.investmentnews.com/article/20150713/FEATURE/150719999/the-great-wealth-transferiscoming-putting-advisers-at-risk>

<https://www.forbes.com/sites/forbesfinancecouncil/2018/05/15/five-predictions-on-the-future-of-wealth-management/#4ab967cf3c6d>

** You Call it Practice, I Call It a *Business*, *Romanoff, Robert Alan*



Talent challenges for professional services

- Attitude toward paying your dues
- Meaningful work
- Training and professional development
- Work-life balance
- Alternative career paths
- Progressive work policies

Sources: <https://launchbox365.com/blog/solving-professional-service-industrys-millennial-challenge/>



Having the world's knowledge at our fingertips has caused the development of a new set of expectations for how advice is bought and sold."

Sources: <https://www.bigskyassociates.com/blog/you-are-wrong-about-millennials-and-its-going-to-wreck-your-business>



Investing in what clients want

- The digital experience
 - Expectation that all facets of wealth (tax, estate and finance) are integrated and accessible.
- Complete transparency into process and fees
 - Including timely acknowledgment and validation.
- Corporate social responsibility
 - Desire to work with organizations whose values align with their personal values.
- Life experiences
 - Unique and exclusive experiences are the trend and becoming the expectation.



Investing in what clients want - Rogerson

- 61% rate legacy development as a top financial need.
–*Mindscape Study*
- 86% of families say it is important to leave values and life lessons as inheritance. –*Morningstar*
- 90% of families say, “Our plan does not deal with our goals, wants and objectives!” –*David York*
- 46% of Heckerling attendees said “family conflict” was the biggest threat to estate planning. “Not communicating the plan” and “Blended families issues” were key. –*TD Wealth*



By 2022, women will control
OVER 60%
of wealth in the U.S.

Source: <https://www.forbes.com/sites/forbesfinancecouncil/2017/08/08/five-reasons-women-are-taking-the-lead-in-financial-planning/#7d6a530c3500>



Role of women

- 48% of estates worth \$5MM+ are controlled by women.
- 90% of women will be solely responsible for their families wealth at some point in time.
- 96% of women are sharing in or primarily responsible in financial decisions.
- In many instances, women want to work with women.

Source: <https://www.forbes.com/sites/forbesfinancecouncil/2017/08/08/five-reasons-women-are-taking-the-lead-in-financial-planning/#7d6a530c3500>



Impact to our industry

- Need for more female leadership.
- Clients want a diverse team “at the table”.
- Tailored work arrangements.
- Conversations focused on broader concepts:
 - Technical topics
 - Goals and values
 - Family relationships
 - Philanthropy and legacy



What are successful UHNW families doing?

And how organizations are
responding...



What are families doing?

- Creating a family meeting structure.
- Utilizing a family wealth coach/facilitator.
- Setting expectations to prepare the rising generation.
- Providing an educational roadmap focused on technical and non-technical topics.
- Sending children to boot camps and other programs focused on preparing heirs.
- Engaging multiple generations in decision-making.
- Using philanthropy as an easy place to start.



Barriers and roadblocks

For the family:

- Time and geography
- Stage of life and age differences
- In-laws
- Afraid of demotivating
- Differing perspectives and opinions



How are firms and advisors responding?

- Family dynamics, family education and family building services are becoming commonplace at many institutions.
 - [Institute for Family Culture – Abbot Downing](#)
 - [Merrill Lynch's Financial Education Boot Camp](#)
 - [PwC NextGen U](#)
 - [Deloitte Family Governance and Leadership Services](#)
 - [UBS Young Successors Program](#)
 - [Hawthorn, PNC Family Wealth® Institute for Family Success](#)
 - [Vanguard Family Legacy Services](#)



Tackling challenges

For the advisor:

- Non-technical topics are NOT always in our wheelhouse.
- No immediate consequence if clients don't act.
- Struggle to relate to multiple generations in a single family.
- Limited capacity to add to already busy practice.



Our opportunity



Our opportunity

- In general, spend more time with clients; emphasize value of both technical and non-technical advice being given to clients.
- Continue to invest in technology.
- Shift our approach to meet the expectations of both younger clients and younger workforce.
- Find talent in unique places and shifting approach to leverage that talent.
- Collaborate amongst multi-disciplinary teams.