

1 Modern Estate Planning

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2 History of the Estate Tax**3 Estate Taxes**

- Estate Tax Exemption Amount:
 - 2015: \$5,430,000
 - 2016: \$5,450,000
 - 2017: \$5,490,000
- Tax Rate
 - 40%

4 Estate Taxes

- Portability
 - Allows unused portion of estate tax exemption at first spouse's death to carry over to the second spouse
 - Requirements to ensure portability
 - Does not apply to GST tax exemption

5 Gift Taxes

- The taxes that the donor of a gift has to pay
- What is a gift?
 - Any transfer to an individual, either directly or indirectly, where full consideration is not received
- Gift Tax Exclusion
 - 2015: \$14,000
 - 2016: \$14,000
 - 2017: \$14,000
- Reason not to give property to heirs during your lifetime

6 Generation Skipping Taxes

- What is it?
 - The amount that can be directly transferred to a person that is two or more generations below the transferor
- Exemption Amount
 - 2015: \$5,430,000
 - 2016: \$5,450,000
 - 2017: \$5,490,000

- Special planning may be needed due to the fact that the exemption is not portable

7 **Due to...**

- Very high estate tax exemption
- Portability
- High GST exemption

IT'S NOT ALWAYS ABOUT ESTATE TAX ANYMORE

8 **What is the new focus?**

- Minimizing Income Taxes for Beneficiaries
 - Higher income tax rates
 - Historically high exclusion amount
 - Step-Up in Basis upon death
- Ensuring that their children will be taken care of
- Avoiding probate at the first spouse's death

9 **Minimizing Income Taxes**

- Step-Up in Basis
 - Allows beneficiaries to increase the basis in property to the fair market value at the date of death tax free
- There are certain requirements to ensure that this is taken advantage of

10 **Basis Step-Up**

- Example:
 - Decedent's basis in property \$50,000
 - Fair Market Value upon Decedent's Death: \$150,000
 - Beneficiaries' Basis: \$150,000
 - Gain realized tax free: \$100,000

11 **Basis Step-Up Planning**

- Be sure certain assets are included in the Gross Estate
 - Appreciated Assets
- Sell Certain assets prior to death
 - Avoid a step-down in basis
- Many trusts which were drafted prior to the step-up in basis rules may transfer property in a way that makes the step-up unavailable

12 **Ensuring that Children Will be Taken Care of**

- Trusts for Control
 - Trustee controls the assets
 - Protection from beneficiaries' creditors
 - Protection from the beneficiary themselves
 - To ensure that their estate will not be diverted from their natural heirs
 - Remarriage by the surviving spouse
 - Prevents surviving spouse from diverting assets to other individuals

13 **Ensuring that Children Will be Taken Care of**

- Trusts for Minors
 - Cannot give property to a minor
 - Typically a "support" trust
 - HEMS standard
 - Really for basic needs of life
 - Can direct at what age or ages you want the children to be able to directly access the assets
 - Can include specific requirements
- Protection from Creditors

14 **Ensuring that Children Will be Taken Care of**

- Trusts for Control Continued
 - Example of Spouse Unintentionally Diverting Assets
 - You and your spouse have two children
 - Surviving Spouse (SS) remarries
 - New spouse has two children from a previous marriage
 - SS leaves entire estate to new spouse
 - New spouse can then divert the entire thing to the two children from the previous marriage if desired

15 **Ensuring that Children Will be Taken Care of**

- Special Needs Trusts
 - Required if beneficiary receives or may receive government assistance to ensure that the beneficiary is not rendered ineligible
 - Only makes distributions to preserve eligibility and fills in the gaps left by such programs
- If done correctly, trust assets are deemed unavailable to the beneficiary and not "countable assets"

16 **Avoiding Probate at First Death**

- If Estate is well under \$5,490,000 exemption, then there are times to consider advising clients on avoiding probate on first death
- Things to Consider:
 - Joint Ownership of Assets
 - Loss of first Step-Up in Basis
 - Cost savings at first death

17 **Items to Consider that can derail your Estate Plan**

- Check beneficiary designations on all assets (bank accounts, life insurance policies, retirement accounts, etc.)
- How property is titled

18 **Other Estate Planning Documents**

- Durable Power of Attorney
- Advanced Directive for Health Care
- Durable Health Care Power of Attorney

- Health Insurance Portability and Accountability Act Authorization

19 **Alabama State Bar requires the following:**

"No representation is made that the quality of the legal services to be performed is greater than the quality of legal services performed by other lawyers."

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