# estate and gift tax planning

On January 1, 2013, Congress enacted ATRA. This law created certainty and provides for planning opportunities to reduce tax cost of transferring your assets to your beneficiaries.

## ESTATE, GIFT AND GENERATION-SKIPPING TAXES

**Background**

The Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA") provided, among other provisions, a phased reduction in the maximum rate of estate and generation-skipping taxes during the years 2002 through 2009, elimination of these taxes for 2010, and a reinstatement of these taxes after 2010 at the tax rates (and with the exclusions) in effect in 2001. Almost everybody believed that Congress would act to either permanently repeal the estate and generation-skipping taxes or, more likely, enact a modified regime for these taxes to begin in 2010 (or earlier).

In December 2010, Congress enacted the 2010 Tax Relief Act— a temporary, 2-year reprieve from the sunset provisions of EGTRRA. This Act extended and modified the federal estate, gift, and generation-skipping tax provisions through December 31, 2012. These provisions allowed estates of married couples whose assets were $10 million or less to avoid federal transfer taxes in 2011. For 2012, an inflation adjustment made this $5.12 million per person ($10.24 million for a married couple).

On January 1, 2013, the final compromise was reached and ATRA permanently extended and modified federal estate, gift, and generation-skipping tax provisions. For 2015 and 2016, due to inflation adjustment, the exclusion amount increased to $5.43 million (or $10.86 million per couple) and $5.45 million per person (or $10.9 million per couple), respectively. For 2017, the exclusion has been increased to $5.49 million per person or $10.98 million per couple.

As a result of ATRA, the $5 million exclusion, adjusted for inflation, has been made permanent with a maximum tax rate of 40%. This rate was a compromise between 35% and 55% marginal tax rates of previously enacted estate and gift tax provisions.

chart 11

### MAXIMUM GIFT, ESTATE, AND GST TAX RATES AND EXEMPTIONS

The following chart shows the rates and exemptions for the tax years 2010 through 2016 and thereafter:

| | Maximum Rates | Exemptions (Cumulative Tax-Free Transfers) | | | State Tax Credit |
|---|---|---|---|---|---|
| **Year** | **Gift, Estate and GST Tax** | **Gift** | **Estate** | **GST** | |
| 2010* | 35% | $1,000,000 | $5,000,000 | $5,000,000 | NO |
| 2011 | 35% | $5,000,000 | $5,000,000 | $5,000,000 | NO |
| 2012 | 35% | $5,120,000 | $5,120,000 | $5,120,000 | NO |
| 2013 | 40% | $5,250,000 | $5,250,000 | $5,250,000 | NO |
| 2014 | 40% | $5,340,000 | $5,340,000 | $5,340,000 | NO |
| 2015 | 40% | $5,430,000 | $5,430,000 | $5,430,000 | NO |
| 2016 | 40% | $5,450,000 | $5,450,000 | $5,450,000 | NO |
| 2017 and thereafter** | 40% | $5,490,000 | $5,490,000 | $5,490,000 | NO |

**Unless carryover basis and no estate tax is chosen.*
***Adjusted for inflation for later years.*

For estates in excess of exclusion amounts, there are still opportunities to decrease tax cost of transferring assets to beneficiaries.

**Where do you begin?**
Estate planning will help you to maximize the wealth that can be transferred to your beneficiaries.

Here are some effective strategies that you should consider to reduce the eventual estate tax on your assets:

**Make annual gifts**
For 2016, the annual gift exclusion allows you to make tax-free gifts up to $14,000 per individual (or $28,000 if you are married). The annual gift exclusion remains at $14,000 for 2017. By making gifts annually to any number of your relatives or friends, you could end up transferring substantial amounts out of your estate without using any of your lifetime gift tax exclusion.

**Use your lifetime exclusion**
Also consider utilizing your 2016 lifetime gift tax exclusion of $5.45 million (adjusted each year for inflation and for any exclusion previously utilized). If married, this gives you and your spouse the ability to transfer up to $10.9 million (adjusted annually for inflation) tax-free during your lifetimes. This is in addition to your annual gift exclusions mentioned previously. See Chart 11 for the rates and exemptions for 2010 through 2017. Also, see Tax Tip 22.

**Consider portability of the lifetime exclusion**
Prior to the 2010 Tax Relief Act, married couples had to do careful planning and maintain separately owned assets in order to exclude $7 million (each had a $3.5 million estate tax exclusion) of their assets from federal transfer taxes imposed on their estates after both died. Commencing in 2011, married couples could exclude $10 million ($10.9 million for 2016 and 10.98 million for 2017) of their assets from federal transfer taxes. This is accomplished by a concept known as "portability."

The executors of estates of decedents dying on or after January 1, 2011 may elect to transfer any unused exclusion to the surviving spouse. The amount received by the surviving spouse is called the Deceased Spousal Unused Exclusion ("DSUE") amount. If the executor of the decedent's estate elects transfer, or portability, of the DSUE amount, the surviving spouse can apply the DSUE amount received from the estate of his or her last-deceased spouse against any tax liability arising from subsequent lifetime gifts and transfers at death.

As an example, assume that one spouse dies in calendar year 2017 with a taxable estate of $8 million and leaves it all outright to the surviving spouse (who has $4 million of his or her own assets). No federal estate tax would be due from the estate of the first to die because the surviving spouse receives all of the assets and there is an unlimited marital deduction, and none of the deceased spouse's $5.49 million exclusion would be used. If the deceased spouse's executor elects to transfer the unused $5.49 million, the surviving spouse will have a $10.98 million exclusion (disregarding the inflation indexing) from federal transfer taxes. If the surviving spouse has $12 million of assets on his or her death, only $1.02 million will be subject to the federal estate tax (assuming the surviving spouse dies prior to January 1, 2018). As a result of ATRA, portability has been made permanent.

Although portability of the exclusion simplifies estate tax planning for many couples, there are still significant advantages to using the exclusion in the estate of the first spouse to die, which often necessitates the creation of a "bypass trust." These include:

- Removal of future income and appreciation from transfer taxes.
- Protection of the assets from potential creditors.

### tax tip 22
## USE YOUR LIFETIME GIFT TAX EXCLUSION NOW

You should consider using your lifetime gift tax exclusion immediately if you haven't already done so. Otherwise, the transferred assets may remain in your estate with all future income and appreciation thereon subject to estate tax, either at your death, or, if married, typically at your surviving spouse's death. As a result of ATRA, if you and your spouse have not yet used your exclusions, you can make gifts of $10.9 million in 2016 or $10.98 million in 2017 (in addition to the annual exclusion gifts of $14,000 to each donee from each of you).

The benefit of utilizing your lifetime gift tax exclusion is as follows (assuming a 5% compounded annually after-tax growth rate):

If you transfer $10.98 million in 2017, the $10.98 million will grow to $29,133,209 in 20 years, which will be available to your beneficiaries free of gift and estate taxes. If the appreciated assets pass to your beneficiaries through your estates, assuming you and your spouse will have a combined estate in excess of the estate tax exclusion at the time of your surviving spouse's death, the estate tax on the assets that you did not transfer during your lifetime may be as high as $7,261,284 ($29,133,209 less the $10.98 million exclusion still available at an assumed tax rate of 40%). Your beneficiaries will receive the net balance of $21,871,925, rather than the $29,133,209 had you transferred the assets now.

- Preservation of the assets for children and grandchildren (e.g., in a situation where the surviving spouse remarries).

**Make taxable gifts**

Although there is a reluctance to pay gift taxes, for those people who have used up their available exclusion and can afford to transfer additional assets, paying gift taxes will often increase the amount available for your beneficiaries. For example, assume that you have previously used your available exclusion amount and you have another $5 million that you wish to gift. If you have a large estate, assuming the 40% estate tax rate effective for 2017, your beneficiaries will only receive $3,000,000. However, if you make a net gift of $3,571,429, which is the $5 million amount less gift taxes of $1,428,571 ($3,571,429 at the 40% rate) and survive for 3 years, your beneficiaries will receive an extra $571,429 ($3,571,429 less $3,000,000). (This example ignores the time value of money.) This difference arises because the estate tax is "tax inclusive," which means that the tax is on the amount of total assets and not the amount actually going to the heirs. Furthermore, if the grantor survives 3 years, the taxes are removed from his or her estate.

**Gifts to minors**

One of the common methods of making gifts to children and grandchildren under the age of 21 is to arrange for ownership of the assets to be held by an individual as custodian for the minor under a state's Uniform Transfers to Minors Act ("UTMA"). This type of ownership was previously under the Uniform Gifts to Minors Act ("UGMA"). Under the UTMA, the custodian is required to transfer the property to the minor upon the minor attaining age 21, or to the minor's estate upon the minor's death before age 21. However, it is possible for the custodianship to terminate at age 18 if the designation of ownership contains, in substance, the phrase "until age 18."

It is important to make sure that the person who gifts the property does not serve as a custodian under the UTMA for the minor with respect to that property. If the donor is serving as a custodian and dies before the UTMA status terminates (e.g., before the minor reaches the age of 21), the property held under the UTMA will be included in the donor's taxable estate for estate tax purposes. Fortunately, this result can be avoided with proper advance planning. For example, if a spouse transfers his or her property for the benefit of his or her child and his or her spouse serves as custodian under the UTMA, the property would not be included in the deceased spouse's taxable estate should he or she die before the UTMA status terminates.

## tax tip 23

## TRANSFER APPRECIATION WITH A GRAT FREE OF GIFT TAXES

You transfer securities in a company that has great potential to a 3-year grantor retained annuity trust ("GRAT"). The securities are currently valued at $1,000,000 (200,000 shares at $5 per share). As an example, based on a 1.6% IRS rate (for November 2016) you could set the annuity at 34.40564% to zero out the remainder interest and pay no gift tax on the transfer. You would receive an annuity payment of $344,056 per year ($1,000,000 times .3440564% totaling $1,032,168). Assume the stock appreciates to $8 per share at the end of the first year, $9 at the end of the second year, and $10 at the end of the third year. Since the GRAT does not hold any liquid assets, you will need to use the stock to pay your annuity, as follows:

| | |
|---|---|
| Shares transferred to GRAT | **200,000** |
| Shares used to pay annuities: | |
| Year 1 ($344,056 divided by $8 per share) | (43,007) |
| Year 2 ($344,056 divided by $9 per share) | (38,228) |
| Year 3 ($344,056 divided by $10 per share) | (34,406) |
| Shares remaining at the end of the GRAT's term | 84,359 |
| **Value of shares transferred to beneficiaries ($10 per share)** | **$ 843,590** |

Other methods for transferring assets to minors (or for their benefit of) include:

- Section 529 college savings accounts,
- Section 2503(c) trusts for the benefit of persons under 21 years of age,
- Life insurance trusts,
- Discretionary trusts,
- Direct payment of educational and medical expenses to the qualified educational institution or the medical provider, and
- Totten trust (pay-on-death) bank/securities accounts.

**Pay medical and education costs**
You can directly pay unlimited tuition and medical expenses for any person free of gift taxes. This exclusion is in addition to the annual gift exclusion. Payments can include health insurance premiums and tuition for elementary school through graduate school. You must make these payments directly to the qualifying educational organization or medical provider.

**Use loans rather than gifts**
Lending money to your beneficiaries is a viable option to avoid current gift taxes or the use of your lifetime gift exclusion. You can then use your annual gift tax exclusion to enable your beneficiary to pay the interest due and/or part of the debt principal each year.

For the month of November 2016, the minimum interest rates required by the Internal Revenue Service to be charged on loans with interest to be compounded annually, referred to as applicable federal rates ("AFR"), are:

- 0.68% if the term of the loan is 3 years or less (short-term).
- 1.33% if the term is more than 3 years and less than 9 years (mid-term).
- 2.07% if the term is 9 years or longer (long-term).

These rates are low by historical standards and provide an excellent opportunity to use loans to your beneficiaries as a technique for transferring wealth free of gift and estate taxes. However, you need to make sure that the loan is bona fide (i.e., you intend for it to be repaid) and properly documented.

**Note:** *Connecticut is the only state which imposes gift taxes.*

**Use trusts and other family entities**
Entities and trusts that should be considered for transferring future appreciation out of your estate at minimal or no gift tax include:

- **GRAT:** A GRAT pays you an annuity at a fixed rate in exchange for the assets transferred to the GRAT. If the transferred assets appreciate in excess of the interest rate used by the IRS (1.6% in November 2016), the excess appreciation will pass tax-free to your beneficiaries. With the IRS rates relatively low, the GRAT is an attractive option (see Tax Tip 23).
- **Family limited partnerships and LLCs:** Family limited partnerships ("FLPs") and family limited liability companies ("FLLCs") can be very effective gift and estate tax planning vehicles (though not without some complications and risks). These entities allow you to transfer assets to your beneficiaries, typically at a discounted value, while you retain control of investment decisions and the timing and amount of distributions to the partners (typically family members) (see Tax Tip 24).
- **Personal residence trust:** This is a form of a GRIT (which is a grantor retained interest trust) that uses your principal residence as the asset contributed to the trust with your right to live in the house for a period of time as the annuity payment.

## tax tip 24

## THE ADVANTAGES OF AN FLP OR FLLC

Let's assume in 2017 you and your spouse have not yet used any of your lifetime gift exclusions of $10.98 million ($5.49 million each). You can transfer assets valued at $15,685,714 to an FLP or FLLC, in addition to your annual exclusion gifts, free of gift taxes (based on the assumption that you can sustain a 30% minority and marketability discount on the value of the limited interests).

How much will your beneficiaries receive? The value of their limited partnership interests could grow, free of gift or estate taxes, to $41,618,869 in 20 years from the initial amount of $15,685,714 using a 5% after-tax growth rate. By comparison, if the assets were left to accumulate in your estate, the estate tax could be as high as $12,255,548 (net of the $10.98 million exclusion assuming a maximum rate of 40%), leaving $29,363,321 to your beneficiaries. Thus, there is a potential savings of $12,255,548.

- **Irrevocable life insurance trust ("ILIT"):** An ILIT can remove life insurance proceeds from your estate, thereby transferring substantial wealth to your beneficiaries. However, payment of premiums and gift taxes on the premiums may reduce the tax benefits.

- **Charitable trust:** A charitable trust can help you diversify your portfolio and combine estate planning with your charitable desires. See the chapter on charitable contributions for a more detailed discussion.

- **Bypass trust:** This trust can help you divide your assets properly, so that the future income and appreciation on the assets in the bypass trust escape estate tax when the second spouse dies. However, in states that only allow an exclusion that is less than the federal exclusion, it may be appropriate to limit the amount going into a bypass trust.

**Utilize your generation-skipping transfer tax exemption**

If you transfer assets directly to your children and they eventually pass the assets down to their children, 2 levels of estate tax will be paid (assuming both estates are in excess of the exemption amounts). If you make transfers directly to your grandchildren, or for their eventual benefit, through a trust or other entity, or to other "skip persons" (individuals 2 or more generations lower than you), you will be subject to the GST tax (at a 40% estate tax rate under current law) in addition to gift or estate taxes.

The GST exemption allows you to transfer up to $5.45 million free of the GST tax in 2016 (increasing to $5.49 million in 2017). If you have not yet used the full amount of your gift tax exemption, consider making gifts to your grandchildren (or to a trust for their benefit) up to the amount of your remaining GST tax exemptions, if you can afford to do so. There is no portability between spouses for the GST exemption.

## GRANTOR RETAINED ANNUITY TRUST

When you create a GRAT, you (as a grantor) have made a gift equal to the fair market value of the assets transferred to the GRAT less the present value of the annuity payments you will receive from the trust during the trust's term. The annuity payments are calculated at the IRS prescribed rate so there is no gift tax on transfer to the GRAT ("zero-out" GRAT) and theoretically no assets should be left at the end of the trust term.

The success of the GRAT depends on the amount of income earned and appreciation on the assets during the GRAT term. Income and asset appreciation in excess of the IRS rate (for example 1.6% used for November 2016 transfers) will cover annuity payments during the term of the trust and remaining assets will pass to your beneficiaries gift tax-free (see Tax Tip 23).

All income earned by the GRAT is taxable to you, so the trust's assets are not depleted by income taxes.

**Note:** *If you should die before the expiration of the GRAT's term, the assets would be brought back into your taxable estate, subject to certain limitations.*

## FAMILY LIMITED PARTNERSHIPS AND LIMITED LIABILITY COMPANIES

As Tax Tip 24 illustrates, FLPs or FLLCs can be very beneficial estate planning tools. You can contribute assets to such an entity in exchange for general partnership and limited partnership interests (or member interest if an FLLC). You and/or your spouse typically keep the general partner interest (or remain the managing member of a limited liability company). This interest allows you to retain management control of the investment and distribution decisions (though this control must be set up carefully). You would typically gift only the limited partnership interests, but not in excess of your available annual and lifetime exclusions, thereby avoiding gift tax. Because the limited interests are minority interests subject to lack of marketability and lack of control, the value of the gift can be discounted and the corresponding tax-free amount of the gift can be increased. You should obtain an appraisal to substantiate the discounted value. Care must be exercised to be sure that the control does not result in the FLP's entire assets being included in the grantor's estate.

An even more effective way to use an FLP or FLLC is to create trusts to hold the limited partnership interests for your beneficiaries. These trusts can be grantor trusts for tax purposes, requiring you, as grantor, to include all of the income of the trust on your tax return. You pay all the taxes on the income earned by the FLP or FLLC, allowing the trust to grow tax-free. In effect, you are making an additional tax-free gift. Before doing this, you should make sure your financial position will allow you to continue paying all the income taxes even though you cannot take any cash distributions from the FLP or FLLC.

Rather than gifting the limited partnership interests, another way to transfer the interests to your beneficiaries is to sell the interests to a grantor trust for their benefit. Since such a trust usually has limited funds to purchase the interests, the sale would be done on an installment basis (subject to a rule requiring the trust to be adequately capitalized). The installment payments that you are required to receive would come from distributions to the trust from the partnership, typically from the annual income. By using this grantor trust method, the trust can receive the income free of

taxes, thereby increasing the annual cash to fund payment of the installment note.

While FLPs and FLLCs can be effective estate planning vehicles, they must be carefully structured, fully implemented substantially before death occurs, and have a bona fide, nontax purpose. In addition, the proper tax and accounting records should be maintained, income and gift tax returns should be carefully prepared and all transactions should conform to the legal documents. Unless these precautions are taken, the arrangement may not be upheld in the event of a challenge by the Internal Revenue Service.

In August 2016, the IRS issued proposed regulations under Section 2704 that impose limitations on valuation discounts for transfers of interests in family-controlled entities. These regulations may limit or eliminate lack of control discounts and may impact marketability discounts. The proposed regulations are not finalized and are met with a lot of comments and opposition. If you are considering transferring an interest in a family controlled entity, you will want to consider the proposed regulations.

## QUALIFIED PERSONAL RESIDENCE TRUST

A qualified personal residence trust ("QPRT") is a form of a GRIT that allows you to transfer your personal residence to a trust (typically for your children's benefit) even though you continue to live in the home during the trust's term (e.g., 10 years). You hold an income interest in the home based on the present value of your right to live there during the term of the trust. Gift tax applies to the fair market value of the house reduced by the retained income interest (as actuarially computed using IRS interest rates).

The value of the house at the end of the QPRT's term will go to your beneficiaries free of additional gift or estate taxes. When the QPRT term expires, your children (or a trust for their benefit) will own the residence. They must charge you a fair market value rent to allow you to continue using the residence, and the rent you pay will decrease your taxable estate. If you do not intend to live in the home and your beneficiaries do not want to live there, the trust can sell the house and reinvest the funds in other investments. In either case, there is no additional gift tax when the QPRT terminates. However, the benefits are lost if you die before the QPRT term ends.

## LIFE INSURANCE

Life insurance can serve an important function in your estate plan because it can provide your beneficiaries liquidity to pay estate taxes, especially if the value of your business (or other non-liquid assets) represents a significant portion of your estate. Life insurance can also provide immediate funds to help your family maintain their standard of living and for other purposes. But if the proceeds are left in your taxable estate, the federal estate tax could reduce the proceeds by as much as 40% for 2016 and beyond. To avoid this tax, you must ensure that the proceeds of your life insurance policies are

chart 12

### 2016 STATE ESTATE TAX RATES AND EXEMPTIONS

| State | Maximum Estate Tax Rate | Maximum Gift Tax Rate | Exemption |
|---|---|---|---|
| New York | 16% | None | $4,187,500/5,250,000* |
| New Jersey | 16% | None | $675,000** |
| Connecticut | 12% | 12% | $2,000,000 |
| Pennsylvania | (a) | None | None |

(a) An inheritance tax of 4.5% is imposed on transfers to direct descendants and lineal heirs, 12% on transfers to siblings and 15% on other taxable transfers.

**The exemption amount changes on April 1, 2017. The amount applicable through March 31, 2017 is $4,187,500. The amount from April 1, 2017 through December 31, 2018 will be $5,250,000.*

***In 2017, the New Jersey Estate Tax Exclusion increases to $2,000,000. Effective January 1, 2018, the New Jersey Estate Tax will be repealed. However, the New Jersey Inheritance tax will not be repealed.*

**Note:** *California and Florida have no estate tax. In Florida, there may be a need to file other forms to remove the automatic Florida estate tax lien.*

not payable to either you or your spouse's estate, and that neither of you possess any incidence of ownership in the policy at death.

A properly structured irrevocable life insurance trust ("ILIT") can remove life insurance proceeds from your estate, if the trust is both the policy's owner and beneficiary. The trust can also provide income to your surviving spouse and principal to your children (or other beneficiaries) upon your spouse's death. In addition, the trustee can properly manage and invest the insurance proceeds for future growth.

If you use any of the following funding methods, you can make the trust the owner of the insurance policy without being deemed to have any incidence of ownership:

- Gift sufficient funds to the trust so it can buy the insurance policy and pay all current and future premiums.
- Assign a current policy to the trust and gift future premiums. However, the transfer must be completed at least 3 years before your death to avoid inclusion in your taxable estate.
- Gift to the trust the annual premiums on a policy owned by the trust either by paying them directly or first depositing them in a trust account.
- Sale of the policy to the trust.

Be careful of gift tax issues to the extent you gift funds to purchase the policy, pay premiums or transfer an existing policy that has value. You will only incur a gift tax if the amount exceeds the available annual exclusion and any remaining lifetime gift tax exemption. The government's position is that the annual exclusion is only available if the trust document includes a withdrawal (Crummey) power and the beneficiaries are notified in writing of their right of withdrawal. It is important to properly comply with this administrative requirement.

There are some disadvantages to life insurance trusts, but they can be minimized with proper planning. There will be some additional costs: You will incur legal fees since a carefully drafted trust instrument is needed to satisfy specific rules, and there may be trustee commissions. Also, income tax returns may be required if the trust has assets generating taxable income. These are almost always grantor trusts. However, if the trust only holds the life insurance policy and you pay the annual premiums through gifts, income tax returns will generally not be required.

If you have a life insurance policy that has been in force for at least 3 years, it may prove beneficial to review the policy to see if premiums can be lowered and/or the death benefit can be increased. It is sometimes possible to find a more favorable policy and obtain it in exchange for your old policy on a tax-free basis.

## STATE ESTATE TAX CONSIDERATIONS

You should keep in mind that many states also impose an estate or inheritance tax on persons who are domiciled in the state or have property located in the state. Some of these states continue to impose their estate or inheritance tax even if there is no federal estate tax. Others (e.g., Florida) impose no such tax when there is no federal estate tax credit for taxes paid to a state.

**Changes to estate taxes in New York**

On April 1, 2014, New York State passed legislation known as the Budget Legislation with the new estate tax rates and estate exclusion amounts. The new estate tax provisions are in effect for decedents dying on or after April 1, 2014.

Prior to this legislation, New York estates above $1 million in assets were subject to New York estate taxes. Under the Budget Legislation, the estate exclusion amount will be gradually increased and by April 1, 2017 it will reach the 2013 federal estate tax exclusion of $5.25 million. After January 1, 2019 the basic exclusion amount will equal the federal exclusion amount and will be indexed for inflation in the same manner as the federal exclusion. Below are the basic exclusion amounts ("BEAs") for decedents dying on or after the following dates:

- April 1, 2014 and before April 1, 2015: $2,062,500
- April 1, 2015 and before April 1, 2016: $3,125,000
- April 1, 2016 and before April 1, 2017: $4,187,500
- April 1, 2017 and before Jan. 1, 2019: $5,250,000
- January 1, 2019 and beyond: federal exclusion amount indexed for inflation

Unfortunately, the above basic exclusion amounts start to phase out once the estate's taxable value exceeds the BEA in effect at that time. Furthermore, the estate's exclusion amount is fully phased out once the estate's taxable amount is over 105% of the current BEA.

The legislation also provides for inclusion of taxable gifts "not otherwise included" in the federal gross estate if the gift was made after March 31, 2014 and before January 1, 2019 and the gift was made within 3 years of the donor's death. Annual exclusion gifts do not get pulled back into the New York taxable estate.

## IMPACT ON CERTAIN EXEMPT ORGANIZATIONS

As a result of PATH, the gift tax will not apply to the transfer of money or other property to a tax-exempt organization described in IRC section 501(c)(4) (generally, social welfare organizations) or IRC section 501(c)(6) (generally, trade associations and business leagues).

## CONSISTENT BASIS REPORTING FOR ESTATES

Under the Surface Transportation and Veterans Health Care Choice Act of 2015, IRC section 6035 introduced reporting requirements to assure that a beneficiary's basis in certain property acquired from a decedent be consistent with the value of the property for estate tax purposes. Because many executors were not prepared to comply with the new reporting requirements, the IRS extended the due date for filing Form 8971, Information Regarding Beneficiaries Acquiring Property From a Decedent and distributing Schedules A to beneficiaries. Final regulations issued in December 2016 confirmed that no further extensions beyond June 30, 2016 would apply to initial reporting and that the rule going forward is to file the form within 30 days of filing Form 706.

## NON-TAX CONSIDERATIONS

There are many non-tax reasons to review your estate plan and the related documents.

It is advisable to periodically review your estate plan to make sure it is in conformity with your current wishes and the current state of the law. This review should include nontax considerations, such as:

- Who are your executors and trustees?
- Do you have a power-of-attorney and is it current?
- Is your health care proxy and/or living will current?
- Have you provided for long-term care for your spouse and yourself?
- Are the beneficiaries on your qualified plans and life insurance policies in accordance with your present desires?
- Does your estate plan include new children, grandchildren, etc.?
- Have you named appropriate guardians for your minor children should both parents be deceased while the children remain minors?
- Has anyone mentioned in your will died?
- Will your assets be preserved for your family in the case of a divorce?
- Do you have adequate creditor protections included in your planning?
- At what age do you want your children, grandchildren or other beneficiaries to have full access to inherited assets?
- Do you have a beneficiary with special needs that you want to provide for?
- Do you wish to leave a legacy to a charitable or educational organization?
- If there is a family business, are you satisfied with the beneficiaries who will receive that interest? Has a succession plan for the business been put into place? Do you need to equalize amongst your children where only children working in the business are receiving interests in the business?