Wealth transfer planning

Planning to leave your legacy to your heirs (including charity) can be complex and difficult to face. There is no easy way to say it—anticipating your death is an uncomfortable topic. The issues that need to be confronted are far easier to avoid than to address. Yet effective wealth transfer planning may lessen the likelihood of family conflict, preserve wealth, reduce estate costs, and reduce taxes.
Open the door to planning

Establishing your wealth transfer planning goals

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Open the door to planning

When it comes to wealth transfer planning, establishing who gets what, how they get it, and when they get it are, as a general rule, personal matters—but these decisions can have significant financial implications. While it is human nature to procrastinate on such issues, the entire family benefits if these matters are addressed sooner rather than later. Addressing your estate plan now puts you in a position to monitor its progress while you are living and make adjustments as circumstances evolve. In addition, planning now provides peace of mind that decisive action has been taken. Finally, planning will, in most cases, provide your family with a tax-efficient plan to address the disposition of assets while providing for their long-term needs. If you are willing to start the dialogue today, you will learn how much more tax efficient it is to transfer assets while you are alive rather than waiting to transfer assets once you have passed.

Wealth transfer planning determines how you will “slice up the pie” and encompasses the many activities necessary to confirm that your affairs are in order and that your assets will be directed as you intend.

You can’t take it with you—so where do you want your wealth to go?

There are three places your assets can go at your death: to your family and friends, to charity, or to the government in the form of taxes. Wealth transfer planning determines how you will “slice up the pie” and encompasses the many activities necessary to confirm that your affairs are in order and that your assets will be directed as you intend. For wealthy individuals subject to high estate taxes, effective wealth transfer planning may direct more wealth to family and charity—and less to the government in the form of taxes.

What a wealth transfer plan entails

All estate plans should cover the basics, including having in place a current will, powers of attorney for property and health care (these documents will vary from state to state and may also include a health care directives or living wills), and revocable trusts (if applicable). In addition, planning should provide for guardians for minor children and confirm that assets are titled properly and beneficiary designations are up to date so that assets pass as intended at death.

For wealthy individuals, the estate plan must do much more as it becomes the roadmap from which a legacy will be established and implemented. Effective planning may reduce the likelihood of family conflict as well as the possible administrative and tax costs associated with your passing.

You can’t take it with you—so where do you want your wealth to go?
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Establishing your wealth transfer planning goals

"Don’t let perfect be the enemy of good"
The old adage “don’t let perfect be the enemy of good” applies to all planning—your wealth transfer plan included. Your wealth transfer plan, like every other plan, anticipates the probability of future events in the face of imperfect knowledge. Consequently, it will never be perfect—it will always remain a work in progress requiring periodic updates as anticipated events occur (or not), as market and regulatory developments occur (or not), and as new planning considerations arise (or not). For your part, retaining competent advisors to help you select from the sheer variety of effective planning considerations and to navigate you through the wealth transfer planning process is essential. You should work with your advisors to articulate your current wealth transfer planning goals. Although your goals may evolve over time, the goals you identify today will serve as the foundation that guides the planning steps you choose to implement. And as you execute wealth transfer strategies, you should develop a periodic review and analysis process to compare your accomplishments to your originally defined goals.

The wealth transfer planning process

Life events, as well as market and regulatory factors, can impact the wealth transfer planning process. It is important for your wealth transfer plan to remain flexible, and be revisited and adjusted periodically.

1 What is important to you?
   - Identify your needs
   - Quantify your aspirations
   - Define your goals

2 How do you plan?
   - Determine risk tolerance
   - Collaborate with advisors
   - Develop a wealth and tax approach
   - Identify asset protection plans

3 How will you distribute your wealth?
   - Determine to whom, when, and under what circumstances
   - Evaluate wealth transfer plans
   - Implement and monitor the chosen plans

4 How do you stay in check?
   - Perform regular performance reviews
   - Adjust planning in light of life events and market conditions
Wealth transfer planning
The planning process for your wealth transfer plan

However you choose to approach your wealth transfer plan, the following four considerations must receive appropriate attention:

1. **What is important to you?**

   Upon your passing, your assets must be distributed to your family and friends, philanthropy, or to the government in the form of taxes. If you proactively plan, over time there will likely be more assets transferred to family, friends, and/or the charities of your choice. The first step is to determine to what extent that is important to you and what limits, if any, might be important to impose. For example, is there a limit to the wealth you wish to leave for family? Second, must your plan accommodate your heirs’ special considerations—for example, special needs family members for whom long-term care is important? There are trusts specially designed to address these concerns. How much to endow these trusts with can be objectively determined. Third, does the nature of your wealth require special considerations? Whether to retain a successful business enterprise or see to its orderly disposition should not be ignored. If the business is particularly sensitive to your unique contributions, its monetization during your lifetime must be considered. Fourth, are you passionate about a specific charity? Many individuals have a strong desire to leave a portion of their wealth to one or more charities where they were actively involved or were otherwise passionate about the cause. Your testamentary documents become particularly important if you have a closely-held business and anticipate that the residue of your estate will pass to charity.

Most people can paint the landscape above in broad strokes, but struggle with the details. That’s not a problem. Clear articulation of detailed goals is not required to get started—instead, start by taking incremental but meaningful steps employed through flexible structures to address the goals you can identify now.

If you proactively plan, over time there will likely be more assets transferred to family, friends, and/or the charities of your choice.
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How do you plan?
Flexible planning increases complexity. More complex transfer planning options can often provide greater flexibility and the ability to transfer more wealth and appreciation at a lower transfer tax cost to you. However, prior to implementing such options, two considerations should be addressed. First, should you have an infrastructure in place that will help you navigate the complexity (for example, a family office)? Second, you need to appreciate your level of risk tolerance because certain options may attract greater scrutiny by federal or state tax authorities. Your team of advisors is there to help you assess these considerations and select the right tool(s) for the identified task.

How will you distribute your wealth?
In some instances you may want your heirs or charity to have immediate access, control, and enjoyment of the assets you transferred to them. In other instances, you may consider placing constraints on your heirs’ ability to access wealth. Many individuals transfer assets to trusts so that a third party (either an individual, corporate trustee, or private trust company) can oversee the access to wealth of the trust beneficiaries. Establishing trusts to hold, manage, and invest assets, rather than giving individuals complete control over assets, is almost universally the key to maintaining family wealth for generations to come.

Remember that when you transfer assets to a trust or an individual, you no longer have control over or access to those assets if you intend for them to be removed from your taxable estate. Consequently, it is paramount that you assess, with your advisors, the wealth required to maintain the lifestyle you desire before transferring large amounts of wealth beyond your control.

Establishing trusts to hold, manage, and invest assets, rather than giving individuals complete control over assets, is almost universally the key to maintaining family wealth for generations to come.
4 How do you stay in check?

Once you have a plan in place, it is a leading practice to review your plan with your advisors on a regular basis. There will be market and regulatory factors and life events that will occur, some with little or no warning. Such events may require that you reevaluate your plan, determine whether and to what extent your goals have changed, and may suggest actions required to address the change in goals, much like where we started at Step 1.

Exercising a little discipline with respect to your wealth transfer plan will yield significant results relative to the goals you have identified—particularly if you start early.

Once you have a plan in place, it is a leading practice to review your plan with your advisors on a regular basis.
A well-constructed wealth transfer plan considers tax-efficiency as part of the overall plan. After all, increasing tax efficiency can provide for greater wealth transfer to heirs and/or charity.

The transfer tax system includes three separate taxes: the gift tax, the estate tax, and the generation-skipping transfer (GST) tax. While politically sensitive in the current environment, given the considerable debate over these taxes during the last 20 years, it is safe to conclude at this time that these taxes are here to stay.

Gift tax basics
Most uncompensated transfers of property during life are subject to the federal gift tax. The gift tax is computed based on the fair market value of the property transferred. For 2016 and 2017, the top gift tax rate is 40 percent.

Not all transfers generate transfer tax
The following transfers are excluded in determining the total amount of gifts that are subject to tax:
- Gifts utilizing the lifetime gift tax exclusion
- Gifts that qualify for the gift tax annual exclusion
- Certain education and medical gifts
- Certain gifts to your spouse
- Gifts to qualified charitable organizations
- Transfers to certain qualifying organizations (including some political organizations) that have been granted a specific status by the Internal Revenue Service (IRS)
- Non-gift transactions

The lifetime gift tax exclusion
The amount of property that each person can transfer tax-free is referred to as the applicable exclusion amount. The applicable exclusion amount is used to calculate the credit available to offset the gift tax calculated for current-year transfers. The applicable exclusion amount, which has been indexed for inflation annually since 2012, is currently $5.45 million in 2016 and will increase to $5.49 million in 2017.
Wealth transfer planning
The transfer tax system—a primer

Gift tax annual exclusion
In addition to the lifetime gift tax exclusion amount, each individual taxpayer is allowed an annual exclusion from gift tax for certain gifts valued up to $14,000 per recipient, which is also indexed for inflation, but only in increments of $1,000. To qualify for the gift tax annual exclusion, gifts must be of a present interest. A present interest implies that the beneficiary has a substantial present economic benefit arising from the gift property.

Many outright transfers qualify for the annual exclusion, including gifts of cash, marketable securities, and income-producing real estate. Transfers under the Uniform Transfer to Minors Act and funds contributed to section 529 educational savings plans qualify as present interest gifts by statute. However, most transfers involving restricted access to the transferred assets will not qualify. For example, most transfers in trust cannot qualify as a present interest unless the beneficiary is given the immediate right to withdraw the value of some or all of such transfer out of the trust. Similarly, transfers of interests in certain family investment entities, which do not consistently distribute earnings to their owners, may not qualify for the annual exclusion.

Education and medical gift exceptions
Certain payments made directly to educational institutions and health care providers are not taxable gifts. For example, a grandmother who wishes to help pay for a granddaughter’s education can write tuition checks directly to the school without making a taxable gift. If she writes the check to her granddaughter, however, she will have made a taxable gift to the extent the amount gifted exceeds the $14,000 annual exclusion. Tuition is not limited to college tuition; any qualified school’s tuition can be excluded. Medical expense does not just mean those for doctors and hospitals; any qualified medical expense, including health insurance premiums, can be paid under this exclusion.

Gifts to your spouse
Outright gifts to your spouse, assuming the spouse is a US citizen, qualify for an unlimited marital deduction and are not subject to gift tax. Gifts to non-citizen spouses are instead subject to an annual exclusion limitation ($148,000 and $149,000 for 2016 and 2017, respectively).

The power of annual gifting
Assume a couple has three children. In 2017, this couple can transfer up to $28,000 per child, or $84,000 to all three children. If each child has a spouse, the maximum amount that can be given to the children and their spouses is $168,000 without utilizing any of the couple’s combined $10.98 million applicable exclusion amounts. If the couple has grandchildren, the ability to further reduce their taxable estates through annual gifts expands.
Wealth transfer planning

The transfer tax system—a primer

Gifts to qualified charitable and other tax-exempt organizations

Certain gifts to qualified charitable organizations qualify for the gift tax charitable deduction and are not subject to gift tax. This includes transfers to donor advised funds. For gifts after December 19, 2015, the gift tax also does not apply to transfers to certain qualifying organizations (including some political organizations) that have been granted a specific status by the IRS.

Non-gift transactions

Non-gift transactions may include such transfers as a sale of property between family members for full and adequate consideration, or an intra-family loan arrangement that provides for adequate interest. Other more sophisticated techniques, including the use of the classic zeroed-out grantor retained annuity trust (GRAT), can also result in a non-gift transaction. In many cases, although the transfer results in no gift, it is prudent to nonetheless adequately disclose the transaction on the transferor’s gift tax return in order to start the statute of limitations on that transfer.

Estate Tax Basics

The estate tax is imposed on the fair market value of all assets includible in your estate at the time of your death less debts and expenses and what remains of the applicable exclusion amount. The only permitted reductions to the taxable estate are the value of assets passing in a qualified manner to one’s spouse and the value of qualified assets passing to qualified charities. Generally, the estate tax exemption is what remains of the applicable exclusion amount not utilized through gift transfers. The applicable exclusion amount for 2016 is $5.45 million, increasing to $5.49 million for 2017. Generally, if the total of one’s gross estate and prior gifts exceeds the applicable exclusion amount, the excess is taxed at the top marginal transfer tax rate of 40 percent in 2016 and 2017.

Transfers to a spouse who is a US citizen are covered by the unlimited marital deduction, so such transfers may be made totally free from estate tax. Thus, with proper planning, the estate transfer tax for married individuals can be deferred until the death of the surviving spouse. However, leaving all of your assets to your surviving spouse does not eliminate the need to develop an estate plan for the entire family, nor is it necessarily tax efficient. Most transfers to qualified charities are covered by an unlimited charitable deduction.

Generally, upon the death of an individual, the assets included in the estate of a decedent receive a “step up” in basis. The heirs of the estate receive a basis in the assets equal to the fair market value at the date of death. Thus, except with respect to specific exceptions, any inherent income or gain in appreciated assets at the date of death is extinguished.
Wealth transfer planning

The transfer tax system—a primer

A note on portability
Beginning in 2011, a surviving spouse can use his or her own basic exclusion amount ($5.45 million in 2016, $5.49 million in 2017) plus the unused exclusion amount of his or her most recent deceased spouse to offset the tax on the survivor’s subsequent gifts or to offset his or her estate. The deceased spouse’s unused exclusion amount will not be available to the surviving spouse unless the executor of the deceased spouse’s estate makes a portability election by filing an estate tax return and computes the amount to which the surviving spouse is entitled. Note that the GST tax exemption is not portable.

As favorable as the potential simplicity promised by portability is, it is not an effective replacement for good estate planning, particularly for high net worth families. Family wealth may likely be better preserved where both spouses each have wealth equal to at least their basic exclusion amount and affirmatively plan its use.

GST tax basics
The GST tax is imposed in addition to the gift and estate tax on transfers or bequests made to a “skip person”—a recipient who is at least two generations younger than the donor or decedent, such as a grandchild. If there was no GST tax, a transfer to a grandchild would be subject to the gift or estate tax once, while a gift to a child who then gifts or bequeaths those assets to a their child would be subject to transfer tax twice. The GST tax is intended to tax the gift or bequest to the grandchild twice at the time it is made (through both the gift/estate tax and the GST tax), to compensate for the otherwise skipped level of tax. Furthermore, with respect to a taxable gift, the cash used to pay the GST tax is also subject to gift tax.

Generation assignment—related parties (blue = skip person)
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The transfer tax system—a primer

For GST tax purposes, when a gift or bequest is made within a family, the focus is on the relationship of the transferor and the transferee and not their age difference. The age difference is important only for non-relatives.

The GST tax exemption amount permits the transfer of that amount of assets free of current and subsequent GST tax. The GST tax exemption in 2016 is $5.45 million, increasing to $5.49 million in 2017, coinciding with the gift and estate tax applicable amount. It, too, is inflation adjusted. The GST tax rate is equal to the maximum federal estate tax rate (40 percent in 2016 and 2017) for the year that the skip person receives or becomes permanently vested in assets.

There is also an annual exclusion amount available for transfers subject to GST tax. The GST tax annual exclusion amount, like the gift tax annual exclusion amount, is $14,000 for transfers made in 2016 and 2017. Unlike the gift tax annual exclusion, however, the GST tax annual exclusion is very limited for gifts to trusts.

Generation assignment—unrelated parties (blue = skip person)

Transferor

Non-Family Member
up to 37.5 years younger

Non-Family Member
> 37.5 years younger
State transfer taxes
One benefit of wealth transfer planning during life—compared to death—may be the avoidance of state transfer taxes. As of January 2016, Connecticut is the only state that has a gift tax. Thus, for many wealthy taxpayers, lifetime transfers may only result in a federal tax, but transfers at death may result in both a federal and state transfer tax. Many state transfer taxes are patterned after the federal transfer tax system; however, there are differences, and state taxes may be incurred even in situations in which there is no federal tax. As of January 2016, fourteen states and the District of Columbia impose an estate tax while six states have an inheritance tax. Maryland and New Jersey have both.

State estate and inheritance tax rate and exemptions in 2016

<table>
<thead>
<tr>
<th>State</th>
<th>Inheritance tax</th>
<th>Estate tax</th>
</tr>
</thead>
<tbody>
<tr>
<td>Connecticut</td>
<td>$2.078M; 0%-20%</td>
<td>7.2%-12%</td>
</tr>
<tr>
<td>Delaware</td>
<td>$5.45M; 0.8%-16%</td>
<td>0.8%-16%</td>
</tr>
<tr>
<td>Hawaii</td>
<td>$5.45M; 0.8%-16%</td>
<td>0.8%-16%</td>
</tr>
<tr>
<td>Iowa</td>
<td>0%-15%</td>
<td></td>
</tr>
<tr>
<td>Illinois</td>
<td>0%-16%</td>
<td>0%-16%</td>
</tr>
<tr>
<td>Kentucky</td>
<td>0%-16%</td>
<td></td>
</tr>
<tr>
<td>Maine</td>
<td>$5.45M; 0%-16%</td>
<td>0%-16%</td>
</tr>
<tr>
<td>Maryland</td>
<td>0%-10%</td>
<td>0%-10%</td>
</tr>
<tr>
<td>Massachusetts</td>
<td>$1M; 0%-16%</td>
<td>0%-16%</td>
</tr>
<tr>
<td>Minnesota</td>
<td>$1.6M; 0%-16%</td>
<td>0%-16%</td>
</tr>
<tr>
<td>Nebraska</td>
<td>1%-15%</td>
<td></td>
</tr>
<tr>
<td>New Jersey</td>
<td>0%-10%</td>
<td>0%-10%</td>
</tr>
<tr>
<td>New York</td>
<td>$3.125M; 0%-16%</td>
<td>0%-16%</td>
</tr>
<tr>
<td>Oregon</td>
<td>$1M; 0%-10%</td>
<td>0%-10%</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>0%-15%</td>
<td></td>
</tr>
<tr>
<td>Rhode Island</td>
<td>$1.5M; 0%-16%</td>
<td>0%-16%</td>
</tr>
<tr>
<td>Vermont</td>
<td>$2.75M; 0%-16%</td>
<td>0%-16%</td>
</tr>
<tr>
<td>Washington</td>
<td>$2.078M; 0%-20%</td>
<td>0%-20%</td>
</tr>
<tr>
<td>District of Columbia</td>
<td>$1M; 0%-16%</td>
<td>0%-16%</td>
</tr>
</tbody>
</table>

Note: Exemption amounts are shown for state estate taxes only. Inheritance taxes are levied on the posthumous transfer of assets based on the relationship to the decedent; different rates and exemptions apply depending on the relationship.
Wealth transfer planning

The transfer tax system—a primer

Of note, only two states with an estate tax (Delaware and Hawaii) have an exclusion equal to the federal exclusion amount and index the exclusion for inflation. Consequently, in the states that do not conform to the federal estate tax rules, an immediate state estate/inheritance tax may arise where the corresponding state applicable exclusion amount is less than the federal applicable exclusion amount and the testamentary plan is built upon the federal exclusion amount.

The disparity in state tax rules requires transfer tax planning efforts focused by one’s state of legal domicile. In states that have estate and/or inheritance taxes, transfer tax planning is paramount. In states without transfer taxes but with high income taxes, planning has become much more demanding, very fact-specific and is often centered more on using the transfer tax system as an income tax planning tool for one’s heirs.
Armed with a basic understanding of the wealth transfer tax system, let’s consider some fundamental components of effective wealth transfer planning.

The tax efficiency of transferring assets during life

Family wealth is preserved when it is taxed at the lowest possible effective tax rate. The gift tax is assessed only on the value of the property transferred whereas the estate tax is assessed on the aggregate value of all of the decedent’s wealth including the funds with which the estate tax will be paid. Thus, the effective tax rate for gifts is always lower than for bequests.

Thus, the “tax exclusive” nature of the gift tax makes taxable gifts a generally more efficient method of transferring wealth. Federal and state governments, aware of this advantage, generally require the gift taxes paid with respect to any gifts made within three years of death be added back to the gross estate. Doing so recaptures the “tax exclusion” benefit and thereby discourages so-called “death bed transfers.”

Assuming the same $100 is available for distribution and the gift tax rate is 40 percent, you can transfer $71.43 of the $100 to the donee, and only $28.57 (40 percent of the $71.43 transferred) would be remitted to the government to satisfy your gift tax liability. This increased transfer opportunity—$71.43 versus $60 in our example—demonstrates how much more efficient it is to transfer assets during lifetime rather than at death. This conclusion remains true even taking into account the time value of money.
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The effective use of trusts
Trusts have been used by wealthy families for generations to protect, oversee and manage wealth, passing it from one generation to the next. Trusts regulate access to assets by beneficiaries (typically younger family members or those without the legal or mental capacity to own assets outright).

Almost any dispositive scheme imaginable can be accomplished with a trust. This requires a skilled draftsman because once the trust becomes irrevocable, changes, while possible, are problematic. Moreover, trusts follow state law which can limit both the trust’s duration and a trustee’s conduct. Thus, choosing the governing state law is an important consideration.

Whether a trust is regarded for income and transfer tax purposes depends upon, among other things, the participation of the settlor (i.e., the person who created the trust). Complications may arise if the settlor retains either an economic interest in or broad powers over trust assets, or when the grantor’s spouse is a beneficiary of the trust. For example, a revocable trust, while legally binding, has no tax significance at all. In contrast, an intentionally defective irrevocable trust (IDIT) is legally binding and should be regarded for estate tax purposes, but, due to the settlor’s retained powers, may be disregarded for income tax purposes. Accordingly, care must be exercised in these situations that the trust agreement support the intended result—because the result can be very meaningful for wealth transfer tax purposes.

An IDIT can be excludible from the grantor’s estate. However, the grantor recognizes and pays income tax annually on the trust’s taxable income. As such, the trust does not consume its own assets to pay taxes and the grantor is in essence making tax-free gifts to the trust with the payment of such taxes.

The importance of valuation
For many wealthy taxpayers, the $5.49 million exclusion ($10.98 million per couple) for gifts made in 2017 is more than enough to cover their wealth transfer goals—thus reducing the need for more complicated wealth transfer transactions. Others may decide to gift minority interests in closely-held businesses, fractional interests in real estate, interests in private equity funds, or in other investment entities, such as family investment partnerships or limited liability companies.

Traditionally, a minority interest in a closely-held family enterprise are valued at less than its proportionate share of going concern value (for a business enterprise) or net asset value (for an investment entity) due to valuation discounts applied for lack of control and/or marketability. Such discounts allow for more effective wealth transfers, as interests in these family owned enterprises may be passed at a relatively lower transfer tax value.

Proposed regulations under section 2704
On August 4, 2016, the Treasury Department and the IRS published proposed regulations under section 2704. If the proposed regulations remain unaltered and unchallenged, they may significantly reduce minority and marketability discounts when determining gift and/or estate tax values of interests in family-controlled entities. If, and then when, these regulations are finalized, while they will not affect how wealth transfer planning is undertaken, they will require such planning to consider relatively higher values for affected assets than is currently the case.
Wealth transfer planning

Fundamentals of effective wealth transfer planning

The family uses of leverage
Parents can loan money to their children, trusts for their children (especially grantor trusts) or entities owned by their children and charge interest at the IRS-prescribed applicable federal rate (AFR), the minimum rate required to be charged between related parties. In today’s interest rate environment, the AFR is significantly lower than the rate at which most individuals would be able to borrow from a bank.

The borrowed funds would be invested in assets (perhaps assets acquired from the grantor) anticipated to earn a rate of return greater than the interest rate being charged by the lender. If the asset performs as predicted, the child, trust or business will accumulate wealth without a transfer tax being imposed on the parent. Of course, there may be gift tax consequences if the asset does not perform as predicted. The advantage of lending and selling assets to a grantor trust is that the grantor (who is also the lender) will not need to report or be taxed on interest income related to the loan or gain related to the sale of assets.

Transferring value can be independent from transferring control
Many wealthy individuals are reluctant to make lifetime transfers of wealth because they feel that they will lose their ability to manage or control the assets. This fear of relinquishing control can often delay or completely derail the implementation of effective wealth planning.

One’s gross estate also includes assets to which the decedent once held title but transferred without full compensation, in a manner where he or she continued to enjoy the assets, their income, or had the power to determine who would enjoy the assets or their income. The classic example is a revocable trust holding title to assets held for the benefit of the grantor—the assets of such a trust are included in the gross estate at their date of death value.
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Transfer tax planning will be effective only where the decedent relinquished both the economic benefits of the transferred property and the control of those benefits.

This treatment, however, has been extended to trusts for the benefit of others and to partnerships and corporations to which the decedent contributed assets in exchange for an equity interest. If the decedent was found to have retained too much control, the value of the transferred assets at the date of death will be included in the gross estate, not the value of the equity interest. Consequently, transfer tax planning will be effective only where the decedent relinquished both the economic benefits of the transferred property and the control of those benefits. Given these complications, it is highly recommended that a strong governance structure be established to monitor the transferor’s relationship to the transferred property in order to mitigate the estate inclusion risk.

A related but separate concern is that lifetime transfers will result in unproductive heirs. Many wealthy individuals believe that their children are unaware of the family’s wealth and that lifetime transfers of wealth will act as a disincentive, permitting the children to pursue an unacceptable lifestyle. Effective planning can address these issues—but it requires striking a fine balance in order to satisfy the senior generation’s concerns with the ability to achieve the desired financial and nonfinancial goals. For example, where a family business is included in a family’s holdings and the senior generation seeks to maintain decision-making authority, value may be transferred to junior generation family members through the use of nonvoting (or low-voting) interests. Further, assets transferred to the junior generation are often placed in trust, and the dispositive terms of those trusts can be thoughtfully crafted to address a particular family’s goals and objectives. However, as indicated above, at some future point transfers of interests in these entities may be subject to valuation under section 2704.
Wealth transfer planning
Moving forward

A critical and often overlooked element of wealth planning is keeping plans and directives up to date, particularly as assets grow or relationships change.

Assembling your planning team
The more wealth involved, the more complex the relationships and the more people typically involved. The more input, the more ideas that may result—but in the wrong situation it may also produce more pressure. At a minimum, planning should involve a married couple—hopefully on the same page—as well as an attorney and tax and investment advisors. It is not uncommon for attorneys to interview both individuals separately to validate that they are both able to express their views and interests openly. Beyond that, you will need to consider family dynamics and relationships. At the appropriate time, you will need to involve the next generation and others in a position of trust—such as designated fiduciaries (executors, personal representatives, trustees, agents, etc.)—to communicate and confirm their understanding of your wishes and expectations.

As with many aspects of estate planning, there is no one-size-fits-all formula for choosing the right fiduciary; much depends on the size and complexity of your estate. Many wealthy families opt for a combined corporate/individual approach to serve as fiduciary—including an individual who understands the family dynamics and interests, such as the need to treat a certain child’s bequest differently from others, and a corporation that professionally approaches trust administration. Having one capable individual who may fulfill both roles offers some advantages, but keep in mind that when one family member is in a position of making decisions on behalf of others, there may be conflicts. In these cases, plans may be drafted to help reduce personal fiduciary liability for issues related to conflicts of interest.

Reviewing and updating your plans
A critical and often overlooked element of wealth planning is keeping plans and directives up to date, particularly as assets grow or relationships change. While life events such as marriages, divorces, deaths, or births should prompt an analysis of plans, so too should certain market factors—for example, substantial increases or declines in asset values, sharp changes in the interest rate environment, or significant tax law changes.

For example, many individuals have taken the step to quantify the estate tax liability due if the individual should unexpectedly pass today, based on the existing estate plan. Such an analysis will test the written word in the estate plan against the mathematical computation necessary to determine the estate tax due. From the review, it is likely that additional considerations may be identified and ambiguities in the wealth transfer plan will be encountered, both of which may require further clarification. Thereafter, regular analysis provides the opportunity to monitor your plans and your progress in prefunding wealth-transfer strategies in light of a changing regulatory environment and a volatile economy. In addition, the review allows you to verify that these strategies remain relevant to your goals and objectives.
Wealth transfer planning

Now it’s your turn

The success you’ve already enjoyed has required vision, creativity, planning, edification and perseverance, as all great endeavors do. Why should your legacy planning be different? The same focus can serve a great purpose—planning for your legacy and, indirectly, your family’s financial future. Most people wait outside this door too long—open the door, sit down with your advisors and start the dialogue. You’ll be grateful you did.
## Resources

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Coming soon

In December

- Post-election update
- Wealth transfer planning alternatives
- Post-mortem considerations
- Philanthropy
- Tax implications of fund investing

In 2017

- Family office
- Globalization

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