

Insights for Entrepreneurs

Part Three: Overview of Wealth Planning Structures

Working as part of an integrated advisory team, your Morgan Stanley Private Wealth Advisor can help you make well-informed personal wealth management decisions at every stage of your company's development. Our goal is to provide you with the information, insight and resources needed to help you reach your personal and professional goals. We are here to help you answer the key questions that arise at the intersection of your business strategy and your personal wealth management.

How Can I Use Trusts to Reduce My Long-Term Tax Exposure?

As the value of your company increases, it can become increasingly difficult to effectively redistribute the wealth among family members. One solution to this dilemma involves establishing estate planning structures that permit beneficiaries to profit from the appreciation in company value while still minimizing the impact of estate and gift taxes.

Two planning structures that are commonly used in this regard are Grantor-retained Annuity Trusts (GRATs) and Intentionally Defective Grantor Trusts (IDGTs). Both approaches are especially popular with business owners, regardless of their ultimate exit strategy. Though not a trust, Family Limited Partnerships (FLPs) are also used in similar fashion. In each case, the basic methodology is to gift ownership interests to beneficiaries while valuations are as low as possible.

By removing the assets from your estate, you allow for much of the subsequent appreciation in value to accrue on behalf of beneficiaries. This can be useful if you have already exhausted your approximately \$11.18 million in 2018 (although the official numbers have not yet been released by the IRS) lifetime estate and gift tax exemption (or roughly \$22.36 million for married couples) or if you wish to preserve it for other wealth transfer opportunities.

It is important to note that for these strategies to be effective, they should be deployed prior to any sale or transfer of your business.

How Does a GRAT Work?

As the donor, you create a trust that pays you an annuity for a fixed period of time, either a series of equal amounts or amounts that increase up to 20% per year. You then direct that any assets left after the annuity is paid, the "remainder interest," be paid to the trust

beneficiaries, often close family members to whom you wish to transfer wealth. That remainder interest is deemed to be a gift to the beneficiaries. The values of the taxable gift is the fair market value of the assets transferred into the trust, minus the value of the annuity you "retained" as the donor (which is based on an IRS discount rate known as the 7520 rate.) The transfer to the trust can be structured so the value of the grantor's retained interest is virtually equal to the market value of the property placed in trust. That results in a very small taxable gift on the creation of the GRAT ("zeroing out" the GRAT), which will be reported on the donor's annual gift tax return.

Your GRAT can produce estate and gift tax savings if the trust property produces an annual return in excess of the IRS discount rate over the term of the annuity. The donor effectively shifts the entire value of that excess to the beneficiaries without making an

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additional taxable gift. The donor will also have separately paid any income tax liability of the trust, further leveraging this gifting technique. And if the GRAT is structured so the annuity “grows” by up to 20% per year, more principal can compound for the benefit of the remainder beneficiaries potentially allowing more property to pass to them at the expiration of the annuity.

How Does an Intentionally Defective Grantor Trust (IDGT) Work?

An IDGT is an estate planning tool used by those who are attempting to freeze the value of an asset for estate planning purposes, assets like shares of your early-stage or pre-IPO company, for example.

The first step is to create the irrevocable trust, the IDGT. As the donor, you then can sell assets to the IDGT in exchange for the trust’s interest-bearing promissory note. The sale of the asset to the IDGT removed the asset from your estate. The interest rate will be based on IRS published rates and is often less than the rate used in GRATs. The note may provide for level payments of principal and interest, be self-amortizing or bear interest only with a balloon payment of principal. No gain or loss is recognized on your sale to the trust, and the repayment of the promissory note has no income tax consequences to you or the trust because you are treated as the owner of the trust for income tax purposes. By paying taxes on trust income, you, in effect, make additional transfers to the beneficiaries of the trust, who are not subject to gift tax.

Most commentators suggest that a “seed gift” be at least 10% of the principal amount of the promissory note should be contributed to the IDGT. The transfer of such seed gift to the IDGT can be made utilizing both the gift tax annual exclusion or the gift tax exemption amount. The IDGT can be effective for gifts to grandchildren and other remote descendants if the GDT exemption is properly allocated to the trust.

What Is a Family Limited Partnership?

A Family Limited Partnership (FLP) is a structure that enables you to gift limited partnership (LP) interests to family members or to a trust while retaining a General Partnership (GP) interest for yourself. As GPs, you maintain management and investment control over the partnership’s underlying assets as well as broad discretionary authority to determine the amount of timing and distributions. The meaningful restrictions imposed upon limited partners as well as their lack of control over the broader FLP structure can provide substantial valuation discounts. This may minimize the impact of gift and estate taxes that your family might otherwise incur.

THE INSIGHTS FOR ENTREPRENEURS SERIES COVERS THE FOLLOWING ADDITIONAL TOPICS:

Choosing a Business Structure

Early-Stage Trust and Estate Planning

The Public Sale of Privately Held Businesses

Family-Owned Business Succession Strategies

Philanthropic Strategies and Structures

Understanding Equity Compensation

FOR FURTHER INFORMATION

If you wish to discuss which estate planning strategies and structures are best-suited to your personal and business goals, please speak to your Private Wealth Advisor. He or she can schedule a meeting with a Morgan Stanley Tax, Trust and Estate Specialist.

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