



The New Paradigm: Planning in Light of Continuing Estate Tax Uncertainty

Unless you've been on a remote Pacific island since Thanksgiving, it's likely you're aware of the temporary tax measures contained in the "Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010" ("the Act"). While the main provisions have been well publicized from a general political and economic perspective, the effect of the estate tax provisions on the life insurance producer has been considerably less documented. While the estate tax exemption was raised to \$5 million per individual with a 35% maximum rate on the taxable estate and the inclusion of portability for the estate tax exemption (surviving spouses can elect to use the exemption of the deceased spouse, if it's not been completely used). **The estate tax provisions of the law expire on December 31, 2012.** Here are some of our suggestions on where you may find your most solid prospects and ideas for how to best serve clients in this uncertain environment, depending on your client's goals.

For many clients, especially those clients with \$1 million to \$5 million in assets, they see themselves being held hostage by the uncertainty of federal tax laws. Like we've been for the past few years, we're limited in our ability to say with any kind of certainty what the future looks like in regard to estate and gift taxes. Clients may be troubled by the huge discrepancy in possible estate tax outcomes. Under newly adopted law, a husband and wife may have \$10 million between them to pass estate tax free. However, since estate tax provisions sunset at the end of 2012, they may be limited to only \$2 million that can be passed estate tax free. Or, they may have some other amount exempt if Congress constructs another compromise or actually passes more lasting legislation. If the client chooses to own or control newly purchased life insurance policies in order to access cash values and the exemption returns to \$1 million with 55% rates, then the death benefit may hemorrhage half of its value due to estate taxes. If the client utilizes a traditional Irrevocable Life Insurance Trust ("ILIT") and funds the policy for death benefits and the exemption stays at \$5 million, then the client may not feel he's made efficient use of resources during his life when he could have had access to cash values all along. Are these the only choices? Isn't there something more flexible and responsive to uncertainty? Fortunately, there are flexible solutions available.

SLAT Solution. A married client may create a Spousal Lifetime Access Trust ("SLAT"). The SLAT is an irrevocable trust that owns a permanent life insurance policy and permits the trustee to give lifetime distributions to the grantor's spouse. This trust provision must be carefully drafted and administered to prevent death benefit inclusion in the grantor's estate. By using a properly created SLAT, cash values can be accessed by the uninsured spouse while the death benefit remains income tax free to the beneficiaries. Additional considerations, as described in the SLAT Agent Reference Guide, must be addressed in determining if a SLAT is best fit for your client.

Private Split Dollar. Another solution to creating estate tax free death benefits while retaining access to cash values is by properly creating a private split dollar arrangement. In this case, the insured/grantor of the trust makes a demand loan to an ILIT to pay life insurance premiums. By creating a demand loan, if a need for the cash value arises, the lender (the insured/grantor) demands repayment for the loan. Tax ramifications vary depending on the type of ILIT used and treatment of loan interest. A properly drafted and administered split-dollar arrangement can add significant flexibility when making irrevocable transfers in our uncertain estate tax environment.

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LIF PRO. Certain clients may feel more comfortable that the federal government’s recent actions indicate that Congress won’t allow the estate tax exemption to return to \$1 million. For those clients, especially those who have been utilizing a “wait-and-see” strategy, they may be interested in individually owned policies, maximum-funded to provide tax-advantaged, supplemental retirement income. For those clients, who will probably be among those with “smaller” large estates that are well below the current \$5 million estate tax exemption, the consequences of a death benefit in their estate is less intimidating to them than losing full access to cash values. If, at some point in the future the estate tax makes individual ownership undesirable, then the policy can be transferred to an ILIT.

The uncertain nature of the estate tax allows for terrific sales opportunities for producers who develop relationships with clients and are open to flexible solutions to address client concerns. The new law creates a situation where clients who created a plan under the previous tax law regime need to review their plans, while people who were waiting for Congressional action need to implement a plan. With this new tax law, the door has been opened for life insurance producers to discuss the future with existing clients and new prospects. Look for more Advanced Markets information on Aviva Live over the next month, including a webcast, client approved pieces, and additional sales opportunities. For more information on Spousal Lifetime Access Trusts, Private Split Dollar, Demand Loans, and LIF PRO, you can access our Aviva Agent Reference Guides on the Advanced Markets Resource Center on Aviva Live, email us at advancedmarkets@avivausa.com, or call Advanced Markets at 1-800-525-7133, option 5.

	2010	2010 Option	2011-2012
Estate Tax Exemption	\$5,000,000	Elect \$0 estate tax + carryover basis	\$5,000,000
Generation Skipping Transfer Tax Exemption	\$5,000,000 (0% Rate)	N/A	\$5,000,000
Lifetime Gift Tax Exemption	\$1,000,000	N/A	\$5,000,000
Annual Gift Tax Exclusion	\$13,000	N/A	\$13,000
Maximum Tax Rate	35%	N/A	35%
Cost Basis Regime	Step-Up	Elect \$0 estate tax + carryover basis	Step-Up

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