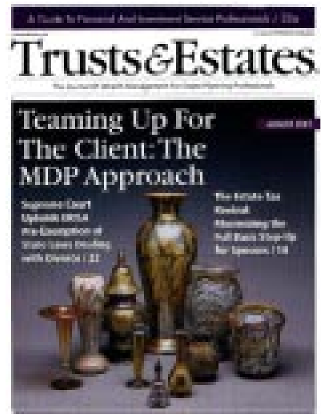
Team Sport: A Multidisciplinary Approach to Advanced Estate Planning



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ADVANCED ESTATE PLANNING FOR affluent clients requires skilled and competent advisors from various disciplines, who are accustomed to working independently of one another and who are used to "controlling" client relationships, to form cooperative working teams for the benefit of the client. The advanced planning techniques that exist under current law, when combined, can provide powerful tools to meet our client's needs, but this requires TEAMWORK.

Some of the most fulfilling professional work during our careers can be the privilege of assisting affluent clients in developing their vision of what it means to build a lasting legacy for both their family and the community. Philanthropic organizations around the United States have depended largely on their relationships with professional advisors to help facilitate major planned and outright gifts. Integrating the client's vision and values into their overall plan is a complex process. A truly multidisciplinary approach is often needed, making advanced estate planning for affluent clients a team sport.

The needs and objectives of most informed affluent clients involve some sort of combination of advanced charitable, financial, and estate planning concepts. Both nonprofit organizations and for-profit firms that go about this business from strictly a product marketing approach, risk losing the benefit of significantly advancing the philanthropic opportunities for their donors, and put their donors at risk of losing other important financial opportunities for themselves and their family. A comprehensive approach to the planning process should include at a minimum:
1) an analysis of business succession and asset protection concerns,
2) intergenerational family governance and relationship issues,
3) annual income, retirement and financial planning objectives, and
4) sensitive approaches to income tax and estate planning goals and concerns. As good as every planning professional likes to believe he or she is, it should be clear that creative and effective planning for and on behalf of affluent clients should be a team sport.

Team Sport: The Team Members

True multidisciplinary teamwork requires skilled and competent advisors from various disciplines, who are accustomed to working independently of one another and who are used to "controlling" client relationships, to form cooperative working teams for the benefit of the client. If advisors fail to work together as a team, they often end up advising the client with cross-purposes and sometimes mixed agendas, frequently to the client's detriment. Most all of us have seen or heard about the horror stories of shoddy drafting, incomplete or unfunded plans, or inappropriate financial product placement.

Sometimes looking just at the individual pieces of a client's situation may cause an advisor to make a recommendation that is inappropriate when viewed from the larger planning perspective. Independent advisors who have the skill to work effectively in a team environment can enjoy the powerful benefit of other team members' strengths, while contributing their own experience to the quality of the work. This synergy not only adds tangible value to the planning process, but also makes the experience educational and enjoyable for the clients and family members involved.

Steven R. Covey, in his book, *Principle-Centered Leadership*, identifies the ability to work "interdependently" in collaborative teams as the highest leadership skill for individuals of all professions and walks of life. Interdependent thinking encourages team members to work synergistically, and to perform at the top of their critical abilities. Because each professional brings a different perspective to the planning process, the team benefits from the combined experience and creativity of the group. This often permits the planning process to be more responsive to evolving ideas in development and implementation of the plan, both for today and into the future.

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Is The "One-Stop Shop" the Solution?

Over the past decade, many of the large international banks and accounting firms have tried to replicate this team approach by hiring expertise from various disciplines in-house. Today the trend of the "one stop shop," where large integrated financial service firms employ lawyers, accountants, financial investment advisors, trust officers, and insurance experts, is commonplace. However, even in the large firms, competing departments, policies and compensation issues, and proprietary product, together with personalities and corporate politics can get in the way of effective team play to the detriment of the client who is often unaware of the firms' competing interests or problems. Even many of these firms have begun to recognize the weaknesses inherent in the "one stop shop" approach – the solution has been to outsource work with key advisors with whom they can effectively play as a team.

Often, many of the brightest and most talented professionals may choose to work in niche practices or settings that provide them with independence and entrepreneurial opportunities not afforded them by the large firms. Many affluent clients like the idea that their planning professionals are able to provide independent, critical, and creative solutions to their problems, without the need to be dependent on a single source of advice.

Further, technology has made it possible for clients to interface with multiple sources of advice and services. The reality is that the most important cherished client commodity is control. Clients and donors like to remain in control. Effective estate, charitable, and financial planning for affluent clients requires that client's advisors actually cooperate to educate and listen to what the client wants, to analyze, recommend, design, and implement sophisticated solutions to their estate planning concerns.

Is Estate Tax Repeal for Real?

Looming ever larger on the horizon is the stark reality and uncertainty of estate tax repeal. This situation has many professional advisors and their high-end net worth clients in a state of indecisiveness. Just what do we advise our client to do? The truth is that we will not know if the estate tax will be finally repealed until the year 2010 or 2011. Final estate tax repeal will not happen unless Congress can come up with a clear way to pay for it. The reason the current repeal legislation has a "phase-in period" is because of the 10-year budget cycle. Since the estate tax repeal is not effective until January 1, 2010, and the Economic Growth and Taxpayer Relief Reconciliation Act of 2001 contains a sunset provision that reverses its affect after December 31, 2010, Congress avoided dealing with the cost of actual repeal.

CHART 1: Estimated estate tax owed if death occurs in the year 2009

2009 Gross Estate	Tax Owed
$ 7,500,000	$ 1,800,000
$10,000,000	$ 2,925,000
$15,000,000	$ 5,175,000
$20,000,000	$ 7,425,000
$30,000,000	$11,925,000
$40,000,000	$16,425,000
$50,000,000	$20,925,000

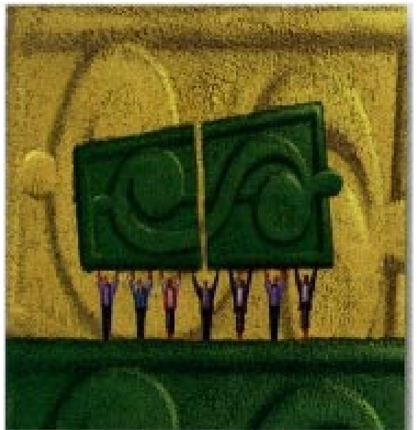
Even if estate tax repeal becomes real, there is the specter of a new estate tax or a modified capital gains tax, or worse yet, state death taxes. Also, there is great possibility of an estate tax returning in some form that will exclude many of the planning opportunities currently available. We must remember that during the so called "phase-in period" several presidents and Congresses will have come and gone.

Will Congress be able to find the dollars to pay for repeal of the estate tax, consistent with the Congressional Budget Act of 1974, when the time actually comes? With continued concerns about the deficit, social security, unstable domestic and foreign markets, domestic production and interest rates, each new Congress will be tempted to "just say no" to estate tax repeal. This is especially true in the face of multiple billions of dollars being transferred in intergenerational wealth in the coming decades.

Our Clients and Donors are at Risk

The truth is that clients of significant wealth remain at special risk – especially if they do nothing to plan for that risk in the face of regulatory uncertainty. What to do? This should be of larger importance during the phase-in period because clients and donors are more likely to be lulled into a false sense of security. Because of the political environment and razor thin margins in Congress, it is far more likely that future Congresses will freeze the estate tax levels during the phase-in period or cut back levels. Chart 1 illustrates the estimated estate tax owed if death occurs in the year 2009, assuming an exclusion of $3.5 million and a 45 percent tax rate, based on the Economic Growth and Tax Relief Reconciliation Act of 2001.

The risk to affluent clients remains real. Effective planning requires that the independent advisors work together interdependently to benefit the client as a team–this is especially true in the case of more affluent clients with sophisticated planning needs. The client team should focus on solutions that maintain flexible options, especially in the face of the uncertain regulatory environment. This planning process should focus on the results that the informed client wants to achieve, not only for their generation, but future generations of family members and philanthropic community partners.



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The Team Process

The following process illustrates a common approach to developing effective planning teams:

Work with the client to identify creative, competent advisors to establish the team. Be realistic about the strengths and weaknesses of team members. Agree in advance on compensation issues and concerns. Make sure the client is informed and gives his or her consent about these arrangements.

Establish clear goals with the client, which are based on the client's needs and values. This requires a sensitive and flexible values and needs clarification assessment process. It is important that the client is encouraged to be realistic and honest with themselves, spouses, and other family members who are engaged in the planning process. It is important that all aspects of the client's business and personal concerns be considered fully by the client and the team members as is appropriate.

Clearly establish the team members' roles in the analysis, design, implementation, funding, and maintenance of the client's plan.

Perform an analysis of the client's existing documents, business structures, assets, liabilities, cash flow, retirement and future leisure and lifestyle needs, health care concerns, long-term care needs, income tax and estate planning issues.

Work as a team to develop a comprehensive project design and work with the client to establish an implementation timeline and task assignments.

Implement the plan as a team, but maintain flexibility to take advantage of opportunities along the way.

Fully address funding issues regarding each aspect of the plan. It is important to be realistic about funding goals and timelines, including the details about funding and valuation concerns and appraisal costs – make sure the client understands this process and the costs associated with it.

Once the plan is implemented, the team should agree on each of the members' roles in maintaining the plan. This anticipates that there will be an ongoing role in the accounting, management, and legal aspects of the plan. Because the plan is flexible, new opportunities may arise periodically of which the client may wish to take advantage. Examples include freeze techniques for highly appreciating assets; charitable trust techniques for the sale of a highly appreciated

CHART 2: Examples of strategies available to avoid "planning paralysis"

Strategy	Tool
1. Estate Tax Freeze Techniques:	Unified Credit/GSTT Transfers
	Note Sales to IDGITs
	GRATs & QPRTs
	Non-Grantor Charitable Lead Trusts
	Gifts to Spouse/Sale of Remainder
	Gifts to Charity/Capital Replacement
2. Valuation Discounting Techniques:	Family Limited Partnerships
	Shares in S-Corps and LLC's
	Closely Held Minority Interests
	Blockage Discounts
	Undivided Interests in Real Property
	Restricted Stock/Private Placement
	Restricted Management Accounts
3. Time Value of Money Techniques:	All Actuarial Techniques (as above)
	Charitable Remainder Trust with Asset Replacement
	Private Annuities
	Self-Canceling Installment Notes
4. Insurance Planning	Corporate and Private Split Dollar
	Private Placement Policies
	Spousal Life Income Trusts
	ILITs and IDGITs
	Dynasty and Perpetual Trusts
5. Annual Gift Tax Exclusion	$10,000/$20,000 leveraged gifts
	M&E payments to institutions
	539 plans, state tuition plans, etc.
6. Income Tax Planning	Tax Credit Programs
	Oil and Gas Programs
	1031 Exchanges
	Timing Gains and Losses
	Outright Charitable Gifts
	Deferred/Outright Charitable Gift Annuities
	Charitable Remainder Trusts
	Non-Grantor Charitable Lead Trusts
	Tax Deferral Plans
	Commercial Annuities
	Variable Insurance Product

business with asset replacement; market timing opportunities include buying opportunities or joint ventures; income tax planning opportunities may include timing loses with gains or the use of a tax credit or tax deferral; and, investment opportunities change with the market conditions in responsive ways. There are plenty of opportunities to provide future services with clients who have been served by the team. The team should agree in advance on how to handle compensation issues for future business.

Team-Based Planning Can Avoid Planning Paralysis

Despite estate tax repeal, a number of strategies are available to help affluent clients and donors avoid the risk of planning paralysis. Most of these techniques come "Team-Only Recommended." Chart 2 provides examples.

Affluent clients and donors can be guided to "safe harbors" even during this time of stormy uncertainty. The key is to plan flexibly as a team to reach solutions that meet the client's needs and effectively provide for future opportunities. The advanced planning techniques and solutions that exist under current law, when combined, can provide tremendously powerful tools to meet our client's needs, but this requires TEAMWORK!!!