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Looking Ahead:
Identifying
opportunities with
intra-family loans

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Agenda

Identifying opportunities with intra-family loans

- Review of Today's Economic Environment
- Planning Techniques that Implicate the Use of an Intra-Family Loan
- Basics of Intra-Family Loans
- Intra-Family Loan versus Gifting
- Refinancing Existing Intra-Family Loans
- Q&A

Review of Today's Economic Environment

Identifying opportunities with intra-family loans

- Depressed economy due to the pandemic and political unrest
- Already near historical low interest rates were reduced further by the Federal Reserve to help stabilize the economy during the pandemic
- Rates for June 2020:
 - Short-term AFR: 0.18%
 - Mid-term AFR: 0.43%
 - Long-term AFR: 1.01%
 - §7520 rate: 0.6%
- Rates for July 2020 (published prior mid-month):
 - Short-term AFR: 0.18%
 - Mid-term AFR: 0.45%
 - Long-term AFR: 1.17%
 - §7520 rate: 0.6%

Context in which the Intra-Family Loan may be an Option

Identifying opportunities with intra-family loans

- Loans to Children to Transfer Wealth
- Home Mortgage for Family Members
- Loans to Trusts or Between Trusts for Family Members
- Loans to an Estate
- Loans to Specific Trusts, like insurance trusts
- Loans to Facilitate a Transaction, like a loan for a sale transaction
- Loans to Expend Amounts Exceeding Available Gift/Estate Tax Exemption

Basics of Intra-Family Loans

Identifying opportunities with intra-family loans

- Intra-Family Transactions and IRS Scrutiny
 - Below-Market Loans
 - IRS Section 7872
- Types of Loans
 - Demand Loans
 - Term Loans
 - Short-term – 3 years or less
 - Mid-term – more than 3 years but less than 9 years
 - Long-term – excess of 9 years
- Structures of the Loan
 - Monthly or Annual Payments
 - Interest Only with Balloon Payment
 - Secured or Unsecured

Basics of Intra-Family Loans

Identifying opportunities with intra-family loans

Bona Fide Intra-Family Loan - Minimize IRS scrutiny

- Structure

- A written loan agreement
- Fixed repayment terms
- Set an interest rate at or above the applicable federal rates
- Fixed repayment terms
- Secure the loan
- Diligence on borrower's ability to pay

- Administration

- No prearranged plan of forgiveness of the loan
- Actual payments made on loan
- Reporting of income for accrued interest, if necessary
- Demand or enforce the loan
- Maintain records of the loan

Intra-Family Loan versus Gifting

Identifying opportunities with intra-family loans

- Advantages of a Loan
 - Keep it all in the family
 - Only source of needed liquidity for the family member
 - Avoid substantial cost in use of third-party lender
 - Generational estate planning
 - Annuity for senior generation/lender
 - No recognition of interest by the lender if lending to grantor trust
- Advantages of a Gift
 - Lender does not need funds returned
 - Diligence indicates borrower unable to repay the loan ever
 - Lender does not plan on collecting – intent is a gift
 - Gifting techniques to leverage available gift tax exemption
 - Avoiding recognition of interest income
 - Avoiding administration of loan
- Case Examples

Forgiving or Refinancing Intra-Family Loans

Identifying opportunities with intra-family loans

- What is the Concern?
 - IRS Scrutiny
 - Income Tax Recognition Event for Lender, Borrower
- How to Mitigate the Concern?
 - Compensate the lender
 - Pay down principal
 - Pay a fee
 - Shorten the term
 - Or Don't



Questions

Looking Ahead

Identifying opportunities with intra-family loans

Monday,
June 29

The Power of Private Placement
Life Insurance

With Jenny Bratt and Richard Levine

Monday,
July 6

Key Benefits of Grantor Retained
Annuity Trusts (GRATS)

With Elizabeth Bawden and James
Brockway

Monday,
July 13

The Long-Term Benefits of
Charitable Lead Annuity Trusts
(CLATS)

With Steven Chidester, Karen Yates and
Lawton Leung

Monday,
July 20

Reducing Tax Burdens with
Intentionally Defective Grantor
Trusts (IDGT)

With James Dougherty and Rebecca
O'Toole

9 AM PT/
12 PM ET

Registration links for each
series presentation will be
available in the Resource
Center.

Genevieve M. Larson

Partner | San Francisco

Genevieve is a partner in the private client and tax team.

She counsels high net worth individuals on estate planning, business succession planning, philanthropy and probate and trust administration. Genevieve implements plans tailored to meet client objectives, whether to mitigate transfer or income taxes or limit risk of loss, through various trust structures. In addition, her experience includes guiding fiduciaries through all aspects of probate and trust administration, including settlement of disputes and probate litigation.

Genevieve also counsels and assists clients with their philanthropic endeavors, through the establishment of tax-exempt organizations, charitable trust structures or donor advised funds.

Genevieve also advises both public charities and private foundations on best practices in governance and operations, fundraising and tax compliance.

Her diverse client base includes entrepreneurs and executives, family businesses and owners, fund managers and investment professionals. For Genevieve's clients, she provides business and tax advice structured specifically to the markets in which her clients are active. She has gained an understanding of the real estate and agricultural industry, in particular, wine and fruit and nut tree production. Her industry experience provides an understanding of the roles and responsibilities necessary to foster successful businesses, and the importance of tax strategies and effective, open succession plans to the long-term health of family-owned enterprises.

Genevieve is an Accredited Estate Planner® (AEP®), a designation awarded by the National Association of Estate Planners & Councils to recognize estate planning professionals who meet stringent requirements. She holds a Martindale-Hubbell® AV Rating and was named a Super Lawyers Rising Star in 2015, 2017, and 2018.



Focus Areas:

- Families and family offices
- Charities and non profits
- Family businesses
- Farms and estates
- High-net-worth individuals
- Philanthropy
- Trustees, executors and fiduciaries

Ivan A. Sacks

Partner | New York

Ivan is a partner in the private client and tax team.

He is a private client lawyer and trusted advisor to international and domestic families of significant wealth. Ivan is a member of the firm's Latin American and Asia-Pacific groups and was also global chairperson of Withersworldwide from July 2013 to July 2019.

Both in the US and in an international context, he counsels families and entrepreneurs on the structuring of their closely held business interests, family offices, and charitable foundations, the design and administration of trusts and estates, and comprehensive risk management, governance and succession planning. He also frequently advises banks and trust companies on fiduciary matters.

Ivan is admitted to the bar of the State of New York and the Federal District Court for the Southern District of New York. He graduated from Columbia Law School, where he was a Harlan Fiske Stone Scholar, a Charles Evans Hughes Fellow and Editor-in-Chief of the Columbia Human Rights Law Review. He is an active member of several bar and professional bar associations and speaks frequently on topics related to wealth planning.

He also serves as a director or other fiduciary for a number of private and non-profit organizations.

Ivan is ranked among *Legal Week's* Private Client Global Elite, and is also listed as a New York Super Lawyer, by *Chambers & Partners* and on Citywealth Leaders List



Focus Areas:

- Leaders and senior executives
- South America
- Israel
- Talents and creatives
- Family businesses
- Professional advisers
- High-net-worth individuals
- Financial services
- Families and family offices
- Trustees, executors and fiduciaries
- Japan
- Hotels and hospitality

Thank you!

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