Assessing your wealth transfer legacy in 2024:

Staying ahead of an evolving tax landscape

With the presidential and congressional elections drawing closer and with lawmakers unable to advance a focused, bipartisan tax relief package that would address some key concerns facing businesses and families, it appears increasingly likely that no significant tax legislation will make it to President Biden's desk this year and that each party will instead focus on messaging efforts touting the tax policy agenda it would put in place if voters give it unified control of the House, Senate, and White House in 2025.

For President Biden and congressional Democrats, that agenda calls for building on the Inflation Reduction Act of 2022, the President's marquee tax legislation which includes a host of tax credits for domestic manufacturing and clean energy production that many Republicans would like to pare back or eliminate. For former President Trump and congressional Republicans, the objective is preserving and extending the Tax Cuts and Jobs Act of 2017 (TCJA), the Trump administration's legacy tax package which includes a host of tax relief provisions for corporations, passthrough entities, individuals, and estates—many of which are set to expire after 2025—that many Democrats say are skewed to large businesses and wealthy individuals and should be eliminated or allowed to sunset.

No matter how control of the White House and Capitol Hill is apportioned in 2025, however, high-wealth individuals and business owners may want to factor the possibility of tax increases into their planning. President Biden has called for allowing the TCJA tax cuts—including lower income tax rates and increased estate and gift tax exemptions—to expire for households with income greater than $400,000; moreover, his recent budgets have called for new wealth-based taxes to help offset the cost of new spending programs and tax relief for low- and middle-income taxpayers. Biden's second-term ambitions could be tempered, though, if Republicans win a majority in the House and Senate or if control of Congress remains closely divided.

In a second Trump administration, the contours of the TCJA likely would remain in place, but with the nonpartisan Congressional Budget Office recently estimating that a permanent extension of that law's expiring provisions would reduce federal receipts by $4.6 trillion over 10 years, deficit hawks on both sides of the aisle in Congress may well demand revenue offsets to help cover that cost.

With the potential for vast changes to tax policies on the horizon, it is crucial to understand this window of opportunity for planning. However, such planning is not done in a vacuum. Life and family circumstances shape goals and objectives, which change over time. Therefore, this edition focuses on broader aspects of wealth transfer planning, specifically how:

- a 'legacy assessment' can be helpful to paint the full picture of how a wealth transfer plan will play out during life and after death, and
- considerations related to domestic and international mobility should be included in an increasingly transient world.

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Sources: Congressional Budget Office, The Budget and Economic Outlook: 2024 to 2034 (Feb 2024) and *Budgetary Outcomes Under Alternative Assumptions About Spending and Revenues (May 2024)*

Wealth transfer planning: Assessing the implications of your legacy

While death and taxes are inevitable, their consequences do not need to be a surprise. In the United States (US), estate planning often focuses on navigating the complicated issues associated with transfer taxes, which include gift, estate and generation-skipping transfer taxes. While this is understandable because the US transfer tax provisions subject the excess of the individual's assets owned or controlled at death over the applicable exclusion amount (AEA) in effect at the individual's date of death (as explained further below, currently $13.61M in 2024) to a 40-percent tax, those taxes are only a piece of the puzzle. A broader analysis of estate planning documents and the various implications of them can prepare the family, family office, or privately held business to pass on a legacy to heirs and/or charities with an impact lasting long after the inevitable. A regular review of the broader estate plan may unveil issues that may not come to light until years or sometimes decades after an individual's passing. For example, the review may identify unanticipated issues such as liquidity gaps for covering estate taxes, inadequate business succession plans, unintended repercussions of charitable gifts, and other matters related to the family's stability and financial strength. This type of 'legacy assessment' can provide a more holistic view and empower families and their businesses to make decisions during their lifetime while there is still time to adjust and evolve.

Examples of considerations that may be uncovered include:

- **Opportunities to utilize any remaining lifetime gift and generation-skipping tax-applicable exclusion.** The Tax Cuts and Jobs Act of 2017 (TCJA) doubled the lifetime applicable exclusion amount from $5 million to $10 million (adjusted for inflation) for tax years 2018 through 2025. Absent legislative action, the lifetime applicable exclusion amount reverts to $5 million (adjusted for inflation) in tax year 2026. Therefore, planning strategies may be identified to utilize the temporarily enhanced exemption. Any time there are changes in tax law, including the scheduled decrease in the applicable exclusion amount at the end of 2025, individuals should consider reassessing estate plans and making any necessary adjustments.
- **Changes in life circumstances.** Significant life milestones such as marriage, divorce, or the birth of a child often trigger the need for estate planning adjustments. These events can bring about substantial changes in an individual's financial and personal circumstances, which should be reflected in their estate plans.

- **Liquidity modeling to determine how to satisfy the tax liability and any estate administration costs.** Cash shortfalls may disrupt estate administration and may lead to rushed decision-making. Such occurrences may be avoided with proper oversight. Planning in advance provides time to explore various options, including selling assets to generate liquidity, determining if any assets qualify for statutory deferral of the estate tax under the Internal Revenue Code, and identifying options for obtaining debt to finance the estate tax.
- **Planning for succession and governance of a family business or family office.** Families often desire for heirs to share equally in an inheritance, but failure to consider the implications of control versus value may bring unwelcome surprises, particularly if one heir participates in the business and others do not. It is helpful to identify gaps between what is expected to occur based upon existing testamentary plans and the family's goals for participation, leadership and ownership in the family business or family office. This may also spark discussions around planning for continued funding and operation of the family office.
- **Reviewing the philanthropic vision.** Large charitable transfers, particularly those expressed as a percentage of the residual estate, invoke complications that should be considered. It is important to Identify and plan for these issues, including consideration of which assets may be best suited for transfer to the charity, income tax implications of

charitable bequests, and application of the private foundation rules.

- **Identify immediate post-death considerations.** Many tax and non-tax tasks need to be completed in the short term after an individual's passing. By identifying these considerations, the family office, family advisors, and most importantly, the family itself, can be better equipped to manage the impact of a loved one's passing.
- **Prepare for estate administration.** The process of settling an estate can be quite extensive, beginning with the process of gathering and determine the value of assets and ending—often many years later—with the distribution of assets. The period in between is called the post-mortem administrative period and often gives rise to complex tax, financial, and other considerations.
- **Audit readiness.** Projecting the future implications of an estate plan can also help the family, family office, or family enterprise identify and quantify potentially material issues that may arise in a potential estate tax examination. This can be accomplished through reviewing prior gifting transactions, gathering required documentation to assist with the estate tax return, or even preparing a detailed mock Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return to identify potential issues.

Every estate plan is as unique as the individuals who create them. Similarly, a detailed 'legacy assessment' is not a one-size-fits-all solution but can be a powerful tool to identify potential discussions that are better to have had in advance when changes can be made.

Additionally, it enhances the preparedness of the family, the family business, and family advisors to manage the potential repercussions of a death of a family member. By going through this process, families and their advisors may be in a stronger position to navigate the complexities of estate planning and administration, aiding in the preservation of the family's legacy. By working with a tax advisor to map out an estate plan, estimate future tax liabilities, and explore various strategic considerations, taxpayers may mitigate future uncertainties and ensure a smoother transition during challenging times.

Wealth transfer planning: multistate and cross-border mobility considerations

The modern family has created an increasingly borderless world around them, and while ease of mobility is generously enjoyed, planning ahead is key to creating and preserving generational wealth.

Mobility considerations transpire both into domestic and international realms through the mobility of family members, investments, and assets alike. While in a domestic context they mainly revolve around community and non-community property regimes, property rights and inheritance law for wealth transfer planning; international mobility can lead to a diversification of nationalities, tax residences, income, estate, gift, and inheritance tax exposures.

In this issue we will meet the hypothetical ultra-wealthy Dubois family who are the founders of Bouffe, a successful global food distribution conglomerate. We will join these globe-trotters as they journey from France to the United States (U.S.) and realize that diligent planning is key to successfully navigating the waters both at home and internationally to reduce cost and exposure.

We meet the family at a critical time when the patriarch, Louis Dubois, has recently passed away. Louis was a citizen and resident of France and a non-resident of the U.S., though he held U.S. situs property. While he duly oversaw the operations of the food distribution company in France through the end of his life, his son Joseph and his daughter Sophie and her spouse, had migrated to the U.S. many years earlier. Joseph and his sister settled in Chicago where Joseph successfully launched the U.S. operations of Bouffe and rose to the ranks of CEO & President of U.S. Operations. While Sophie shared ownership of Bouffe France and U.S., she has chosen to lead a quieter life without any active participation in the family business.

At the time of his passing, his ownership of Bouffe in France, Louis had several real estate holdings in the U.S., including rare artwork and lavish furnishings held within the homes. He also established two foreign revocable grantor trusts (among others) of which his children are the beneficiaries. Together with his trusted advisors, he planned for the ownership of Bouffe to be held via these two grantor trusts after his passing.

Joseph was named as the executor of his estate and began conversations with their estate attorney to administer the estate, and their accountants to prepare and file a Form 706-NA, U.S. Estate Tax Return of a Non-Citizen of the United States (Form 706-NA), to report the U.S. homes, artwork, and furnishings held by Louis at time of his passing. Fortunately, Joseph's advisors informed him that the estate, gift, and generation-skipping transfer (GST) tax treaty between the U.S and France would be analyzed and applied to eliminate or reduce any double estate and inheritance taxation.

Louis bequeathed a Chicago-based property to his wife, Marie, in his will. Among other things, Joseph's advisors may consider whether Marie's status as a non-U.S. citizen impacts availability of the marital deduction to be taken on the Form 706-NA. Can the martial deduction still be utilized by the U.S. estate despite Marie's current status as a non-U.S. Citizen?

In addition to the transfer tax considerations associated with Form 706-NA filing, the accountants also remind Joseph of the estate's income tax considerations. Given Louis owned significant U.S. real property, the accountants are prudent to remind them of the Foreign Investment in Real Property Tax Act (FIRPTA) withholding requirements if Joseph and Sophie decide to sell the U.S. real property held within the estate. Further, Louis's estate may be considered a foreign estate or a foreign estate trust that carries with it additional complexities to navigate.

Marie, who is grief-stricken, is contemplating a permanent move into the Chicago home to be closer to her children and grandchildren. Pre-immigration planning is key to limiting her exposure to U.S. federal income and transfer taxation. This holistic exercise, taking into account both France and the U.S., should be conducted prior to Marie becoming a U.S. income tax resident and estate tax domiciliary.

Amongst a multitude of considerations her advisors may consider:

- Reviewing U.S. residency start dates
- Performing a comparison of tax rates of the two countries
- Reviewing her asset base
- Analyzing whether re-structuring ownership in foreign business entities or filing check-the-box elections might be beneficial
- Reviewing the classification of her interest in foreign entities that might be considered trusts for U.S. tax reporting purposes and analyzing whether any re-structuring might be beneficial
- Considering gifting outright or in trust prior to becoming a U.S. domiciliary
- Analyzing exit tax considerations for her assets in France
- Considering the potential for a marital deduction and accelerating Marie's U.S. tax residency.

Cross-state wealth-transfer considerations

The Dubois family has an array of cross-global border considerations, but what about family movement from outside the U.S. to the States, owning assets in multiple states, and future movement of family members or property acquisitions in new states? Generally, the ultimate goal of the family's estate planning does not change, regardless of location. The Dubois family wants to be efficient and effective with transferring assets to their heirs and have spent a significant amount of time and energy to build the wealth and plan for its future.

But what are the potential traps to be wary of when thinking about estate planning within the states for Marie, Joseph, and Sophie? What questions and issues should they be thinking about and planning for with their advisors?

- **Documents**
  Are the wills, trust documents, and powers of attorney valid in the states the family members live in, or own property in? State laws can change at any time. Has the family and their advisors reviewed recent changes to state laws relevant to their own estate plans?

- **Administration**
  What assets will be subject to the probate process in the various states in which they own property? Is privacy a goal of the family?

- **Community property and separate property states**
  Joseph and Sophie previously relocated to the U.S. from France with their spouses, with primarily community property assets. They moved to Illinois, which does not have community property laws. What happened to the assets owned by Joseph and Sophie? How are those assets titled now, under Illinois property laws?

- **Moving around the United States—quasi-community property states**
  There are not only community property states and separate property states, but quasi-community property state considerations as well. What happens if Sophie and her spouse decide to live in Wisconsin, a community property state? Their assets would have started in France (community property regime), moved to Illinois (separate property regime), and into Wisconsin (community property regime). What type of tracking and records should be maintained by Sophie and her spouse, and for how long?

- **Trust administration**
  The relocation of the person who created the trust is a significant state consideration for estate planning, but what about relocation of the trustees and the trust beneficiaries? These changes can also trigger new tax filing obligations and income allocation changes.

- **Gift, estate, and inheritance tax positions**
  The Dubois family has been advised that not only do they have federal issues to address with gift tax, estate tax, and inheritance tax matters, but many states have their own views in each of these areas. Connecticut is the lone state currently imposing a state gift tax. Maryland imposes both estate and inheritance taxes and is joined by multiple other states with either an estate or an inheritance tax. Illinois, immediately relevant to the Dubois family members, imposes an estate tax with a highest marginal rate of 16%.

  Exemptions and tax base vary by state, so it is important that the family and their advisors model estate tax planning scenarios for Illinois and any other state in which the family members own assets, reside, or are domiciled.

- **Marriage, separation, and divorce**
  These life events are examples of milestones when it may be necessary for the family members to go back to square one and review every detail of the family's estate plans with the full spectrum of tax, legal, and investment advisors.

The Dubois family has a plethora of tax matters to think about and discuss with their advisors. They are not alone. Many modern families are more fluid than ever, and the unexpected is to be expected. As families grow and expand their global footprints, the issues can become exponentially complex, and your tax advisors may help with the ultimate goal of efficient and effective wealth transfer. Having a current estate plan for each family member that can be located swiftly, understood, monitored, tailored (or fully revamped), and effectively administered is one of the first steps.

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