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M&A Tax Talk

The case for estate planning pre-sale

Why now?

As taxpayers assess whether to sell a business, estate planning may be a key driver of the decision related to the timing and structure of a divestiture. Proactive planning can provide an opportunity to transfer long-term, life-changing wealth for one's family in an organized and tax-efficient manner. Several external factors are at work today to encourage business owners to be proactive with their estate planning:

- Until the passage of H.R. 1, commonly known as The One Big Beautiful Bill Act ("OBBBA"), there was uncertainty about the amount of the basic exclusion amount (also known as "lifetime exemption") after 2025. That lifetime exemption amount is the amount an individual can transfer during life or at death, gift and estate tax free. The 2017 Tax Cuts and Jobs Act temporarily doubled the lifetime exemption to $10 million (adjusted for inflation), but that amount was scheduled to decrease after 2025. However, OBBBA permanently increased the exemption amount to $15 million (adjusted for inflation) for transfers on or after January 1, 2026. This increased lifetime exemption amount provides a valuable opportunity for taxpayers to transfer assets out of their estate and help mitigate estate tax. Keep in mind that this is an opportunity, not a guarantee. Future legislation could adjust the lifetime exemption amount. Therefore, planning while favorable rules are in place is key.
- Fluctuations in market value can impact the timing and structure of transfers. For example, transferring business interests or assets during a market downturn may result in lower valuations, reducing potential estate or gift tax liability.
- Closely held businesses often represent a significant portion of an owner's estate. Without proper planning, heirs may be forced to sell business assets to pay estate taxes, potentially at unfavorable terms or at a loss. The federal and state tax codes provide certain reliefs (e.g., IRC § 6166 installment payment provisions) to address these liquidity issues, but this type of relief requires advance planning and meeting specific criteria.
- The valuation and tax treatment of business interests, especially those involving real estate or family-owned entities, can be complex. For example, the distinction between passive investment activities and active trade or business is crucial for qualifying for certain deductions or special valuation rules. Proactive planning is important to document material participation and meet ownership thresholds.
- The application of valuation discounts for lack of marketability or control, and the impact of IRC §§ 2701–2704 (special valuation rules for family-owned entities), can significantly affect the taxable value of business interests. Proactive planning can help structure ownership and agreements to increase available discounts and avoid adverse tax consequences.

If external market conditions propel a taxpayer toward M&A activity, business owners have an opportunity to make estate-planning transfers *pre-sale*.

Just as a truism of the stock market is to "buy low and sell high," a truism for estate planning could be to "transfer low and sell high." A business owner planning for an M&A transaction likely has a price in mind, which may be based on market comparables, revenue multiples, cash flow analysis, etc. However, this aspirational value for the enterprise as a whole is generally not indicative of fair market value for gift and estate purposes, which is established by a qualified appraisal of the interest to be transferred. Since the interest to be transferred is likely to be a minority interest in the entity to be sold, its appraisal would likely yield a much lower value because it would reflect discounts for lack of marketability (including volatility), lack of control, etc. This value gap creates a potential opportunity for business owners to make estate planning transfers (e.g., to children or into a trust) at a lower pre-sale value before selling the business for a higher price.

Gift and Estate Tax 101

There are three transfer tax systems in the U.S.: gift tax, generation skipping transfer (GST) tax, and the estate tax.

- The gift tax rules permit a donor to make transfers of up to $19,000 per donee per year (as of 2025) gift tax free. To the extent that a taxpayer makes gifts to a donee in excess of this annual exclusion amount, they are counted against a taxpayer's lifetime exemption amount. Gifts beyond the lifetime exemption amount are subject to gift tax at 40%.

- A similar generation-skipping transfer (GST) tax of 40% applies to transfers which "skip" a generation (i.e. from grandparent generation to grandchild generation). Such transfers are also subject to a separate exemption equal to that year's lifetime exemption amount.
- The estate tax is based on an individual's personal balance sheet as of their date of death, and it integrates with the gift tax. That's because the lifetime exemption amount is cumulative. Thus, if an individual's taxable estate plus taxable gifts made during lifetime exceeds the lifetime exemption amount, an estate tax of 40% is imposed on the excess.

The lifetime exemption amount for 2025 is $13.99M but, as noted above, OBBBA increased the amount to $15M (adjusted for inflation) for years after 2025. (See Table 1)

As a result, the vast majority of Americans will not pay estate tax. But, for those who will, proactive gift and estate planning may significantly reduce tax exposure, preserving wealth for future generations.

A tale of two founders

Proactive planning can be a powerful tool when it comes to wealth transfer taxes. For example, consider two business founders with equal $39.5M taxable estates (comprised solely of a 100% interest in the business) in April 2025, and no prior taxable gifts (see Table 2). Founder 1 does nothing. In April 2025, Founder 2 makes a gift of 44% of the outstanding stock to a trust of which the proportionate share of the enterprise value is $17.375M. However, the fair market value of the stock determined by a qualified appraisal is $13.9M, reflecting a 20% discount for lack of marketability and lack of control.

Table 1: 2025 Federal wealth transfer tax summary

	Gift tax	Estate tax	GST tax
Annual exclusion	$19,000	N/A	$19,000
Applicable exclusion amount (AEA) aka lifetime exemption	$13,990,000	$13,990,000	$13,990,000
Tax rate (federal)**	40%	40%	40%

* The GST annual exclusion generally does not apply to transfers in trust.
** Certain state and international estate and/or inheritance taxes may also apply. Connecticut is the only state that currently has a gift tax.

Table 2: A tale of two founders

	Transfer before sale	
	Founder 1	Founder 2
	No planning	2025 gift
Value of business units as of April 2025	39,500,000	39,500,000
Gift in 2025*	-0-	13,900,000
Gift tax on 2025 gifts	-0-	-0-
Estate assets in 2026	118,500,000	66,400,000
Adjusted taxable gifts	-	13,900,000
Taxable estate	118,500,000	80,300,000
Estate tax due	41,400,000	26,100,000
Value of estate bequests	77,100,000	40,300,000
Value of gift assets in 2026	-	52,100,000
Value transfer to heirs	77,100,000	92,400,000

*Assumes a discount of 20% for lack of marketability and lack of control.
All numbers are rounded to the nearest $100k.

In December 2025, both businesses are approached by a strategic buyer and sell for three times the April 2025 value in after-income tax proceeds. When both founders die in 2026, Founder 1's estate is worth $118.5M. However, Founder 2's estate is worth only $66.4M since he gifted 44% of the business to the trust prior to the sale. On the date of Founder 2's death, the trust assets, which are outside of his taxable estate, are worth $52.1M.

This example is extreme in its simplicity, but demonstrates the value of pre-sale estate planning and how a simple outright gift to a trust could be enhanced if the trust were structured as a grantor trust.

As illustrated, the retained wealth of Founder 2's family is improved notably when compared to Founder 1. Estate planning advisers may recommend direct gifts and more advanced techniques to transfer upside value appreciation without transferring the original principal, such as a grantor retained annuity trust (GRAT) or a sale to an intentionally defective irrevocable trust (IDIT). There may also be a case for pre-sale charitable planning for philanthropic taxpayers, though care must be exercised to avoid such planning too close to the sale date.

Conclusion

As with all tax matters, the details matter. Effective estate planning requires thoughtful planning, detailed analysis, and careful execution. Business founders on the verge of a major liquidity event are often focused solely on closing the deal. However, with a little foresight, founders may create a lasting financial legacy for future generations.

For additional reading, see:

- Deloitte Private Wealth Services
- 2025 Essential Tax and Wealth Planning Guide
- Family Office Services Brochure | Deloitte US

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