Proskauer

Wealth Management Update

June 2022

The June Section 7520 rate for use with estate planning techniques such as CRTs, CLTs, QPRTs and GRATs is 3.6%, an increase from the May rate of 3.0%. The June applicable federal rate ("AFR") for use with a sale to a defective grantor trust or intra-family loan with a note having a duration of:

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- 3 years or less (the short-term rate, compounded annually) is 2.21%, up from 1.85% in May;
- 3 to 9 years (the mid-term rate, compounded annually) is 2.93%, up from 2.51% in May; and
- 9 years or more (the long-term rate, compounded annually) is 3.11%, up from 2.66% in May.

IRS Proposes Limits on Large Gifts from Future Estates

What happens to gifts over $5 million made between January 1, 2018, the effective date for the Tax Cuts and Jobs Act that doubled the gift tax exemption from $5,000,000 to $10,000,000 plus inflation adjustments, and January 1, 2026, when the higher federal estate and gift exemption is scheduled to drop back to where it had been? Prior to 2019, there was concern that gifts made with the larger exemption could be 'brought back' into the taxpayer's estate and become subject to estate tax at death. In 2019, the IRS issued Final Regulations that created a special rule, referred to as the "Anti-Clawback Rule," ensuring that the donor's estate would not be taxed on completed gifts that were tax free when made as a result of the higher exemption.

The Treasury Department recently released proposed regulations limiting the Anti-Clawback Rule. The proposed regulations attempt to provide whether and how the special rule would apply to certain transfers that are *includible, or treated as includible, in a decedent's gross estate* under §2001(b) of the Internal Revenue Code. Transfers where the donor continues to have title, possession, or other retained rights in the transferred property during life—treated as still owned by the donor upon death, which occur under §§2035, 2036, 2037, 2038, and 2042 of the Internal Revenue Code—do not qualify for the Anti-Clawback Rule. By contrast, a donor's contribution of cash into a trust in which she has no control or interest, continues to reap the benefit of the Anti-Clawback Rule.

International Estate Planning and Brussels IV

Regulation (EU) No. 650/2012 of the European Parliament and the Council of the European Union (commonly known as "Brussels IV")—a regulation addressing choice of laws and administrative rules relating to property situated in European Union jurisdictions—can be used by U.S. nationals to elect the application of U.S. succession law to European assets.

Brussels IV was enacted with the intention to address the substantial differences in the laws of succession that apply among various EU member states. The regulation provides a default mechanism for determining which laws will apply to the succession of a decedent's assets in the EU and allows one EU nation's laws to apply to the succession of all of a decedent's EU property. (The default rule is that the applicable law to decedent's property as a whole will be the country in which the deceased has his or her "habitual residence" at the time of death.) Brussels IV allows a national of any country, even one outside of the EU, to apply the succession law of his own nationality to property situated in the EU.

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