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Keep It in the Family: Three Tips for Preserving Family Business Interests

July 12, 2023

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As a family business owner, are you missing out on valuable estate and wealth transfer planning opportunities or jeopardizing your current plan altogether? Katten recently hosted a program that addressed common concerns, timely opportunities and useful strategies for family business owners. Attendees learned several ways to avoid disrupting well-laid plans and missing opportunities, including the following three tips:

1) Update and coordinate core estate planning documents that impact family business interests

Families should harmonize core estate planning documents and governing family business documents to optimize tax planning and preserve family interests.

First, ensure that basic estate planning documents are in order. At minimum, core estate planning documents should include wills, revocable trusts and powers of attorney for property and health care. Trusts, in particular, are valuable planning tools for family business owners; they can protect business assets and move those assets out of the estate tax system entirely.

Then, coordinate estate planning provisions impacting family business ownership or control with a company's governing documents. Examine rules controlling business interests. If such rules and estate planning provisions are incompatible, a family could be left with confusion, conflict or counterproductive tax consequences. Be sure to inspect provisions regarding buy-sell and co-sale agreements, transfers of shares and permissible owners. S-corporations should consider the one-class-of-stock rule and qualified shareholders, whether individuals or trusts; failure to do so could result in C-corporation status classification and unintended tax consequences.

2) Consider that the highest federal estate tax exemptions in history are set to plunge on January 1, 2026

The current federal estate tax exemption presents invaluable tax planning opportunities — but not for long, so plan ahead. Through December 31, 2025, only assets exceeding $12.92 million — or $25.84 million for married couples — are subject to the federal estate tax (the exemption should continue to increase annually by an inflation adjustment through December 31, 2025.). On January 1, 2026, the exemption reverts to $5 million, adjusted for inflation. In either case, all amounts exceeding the exemption are taxed at 40 percent.

Remember — the gift, estate, and Generation-Skipping Transfer (GST) taxes are parallel taxes, all subject to a 40 percent tax on amounts exceeding the relevant exemptions. Additionally, individuals can gift $17,000 per donee in 2023 without using gift tax exemption.

3) Save millions with early, strategic wealth transfer planning for transfers of family business interests

Irrevocable GST trusts are often the backbone of a family's wealth. Assets in a GST trust avoid the GST tax — a tax imposed on amounts transferred to "skip persons" (persons two or more generations below the grantor) that exceed the GST exemption (currently $12.92 million per person). GST exemption can be allocated to gifts to trusts, and the trust beneficiaries (be they children, grandchildren or more remote descendants) can benefit from trust assets without GST tax consequence. A properly-structured trust will also avoid estate tax.

GST trusts are powerful tools for preserving family business assets — assets in GST trusts, such as business interests or investment real estate, can appreciate indefinitely without further GST and estate tax consequences. Grantors can reduce the value of their taxable estates by gifting or selling assets at a lesser value (i.e., hoping that over time the assets will appreciate) and by paying the income tax on behalf of a properly-structured "grantor trust." As mentioned, beneficiaries can benefit from the trusts' appreciated assets. These strategies can be particularly fruitful when implemented early, for example, well before a family business sale.

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