



## Trusts and Estates

Our Trusts and Estates practice group focuses on a broad range of personal services directed to DLA Piper's individual and business clients, including personal and closely held business planning, estate and trust administration and issues arising from the repeal and reinstatement of estate tax.

### Personal and closely held business planning

Personal planning services include traditional estate planning and estate and trust administration, all related aspects of estate, gift and income tax, and trust construction and related litigation. This area emphasizes wealth enhancement and transfer for individuals and business succession planning for closely held businesses. Representing our clients often involves coordinating corporate activities and ownership with estate and financial planning for management and principal stockholders. We use our business acumen, legal experience and problem-solving abilities to design a plan that meets your objectives. Our approach to estate planning includes a thorough review of your lifetime and testamentary planning needs. Typically, a client will need comprehensive, goal-oriented analysis, as well as traditional estate planning and income-shifting vehicles. Where appropriate, we recommend and execute the most sophisticated techniques to reduce transfer and income taxes. GRATs, CRUTs and QPRTs are used by estate planners every day, but applying the appropriate technique to the right client situation is a function of experience and judgment that we have developed over many years. In addition to representing clients on an individual basis, we are involved in the delivery of planning services at senior- and middle-management levels for many of DLA Piper's publicly owned corporate clients. This service has become an important part of our practice and offers employers the opportunity to assist employees in personal planning. A group's common financial background allows prompt, cost-effective planning not only for more highly compensated employees but also for valuable younger employees whose planning needs are often as acute. Our practice is proactive. We recognize that you cannot be expected to know the most current estate-planning techniques and we do not hesitate to present you with ideas that may be helpful to further your goals.

### Estate and trust administration

Estate administration is a principal part of our practice. We regularly provide the full range of legal administrative services to individual and corporate fiduciaries. Our philosophy is that assets of an estate belong to the beneficiaries and the job of the fiduciary is to comply with all legal requirements and distribute the assets as promptly as possible. We do everything possible to facilitate trust and estate settlements, assisted by highly trained legal assistants who meet clients' needs economically and efficiently. In addition to estate administration, we regularly administer trusts for our clients, offering a full range of tax preparation, asset custody, and accounting services for individuals acting as fiduciaries. Partners of DLA Piper also will act as personal representatives (executors) and trustees. These partners offer years of experience and objectivity to families in meeting their fiduciary needs. We have strong relationships with a number of local and regional banking and investment advisory firms. Members of our group have litigated a broad range of tax issues and cases involving trust, will or other document construction.

### KEY CONTACTS

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- Tax

## Issues arising from the repeal and reinstatement of estate tax

In 2009 Congress did not pass legislation extending rules regarding estate tax, generation-skipping transfer tax (GSTT) and gift tax. Thus, for 2010, both the estate tax and GSTT are repealed. However, in 2011, both estate tax and GSTT return, with lower exemption amounts and higher tax rates than those in effect in 2009. Furthermore, while the estate tax and GSTT tax are repealed for 2010, the gift tax remains in place. Estate plans containing formula language, in this period of change, also may be of concern. In this shifting landscape, we assist clients who are considering a review of their estate plan.

## EXPERIENCE

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- Our lawyers have acted as court-appointed guardians *ad litem* for a series of trusts where the trustees and beneficiaries wanted to form a \$500-600 million joint investment fund. Because of our legal and business experience, the parties and the court requested that we be more involved in the undertaking than would normally be required of a guardian *ad litem*. Accordingly, we advised all the parties and the court in establishing the fund pursuant to the provisions of the trust documents, advised the trustees and investment advisors of their rights and obligations with respect to the operation of the fund, shepherded the entire process through the courts and identified and consulted with financial advisors and other financial professionals on establishing and operating the fund.
- We have represented trustees of trusts serving as general partners of operating entities conducting major real estate development on a national scale, requiring counsel and advice on day-to-day business operations as well as on issues related specifically to the administration of the trusts.
- We have represented trustees and beneficiaries to negotiate family settlement agreements that would otherwise have become contested matters. In one case, we represented a corporate trustee when a decedent's spouse from a second marriage threatened suit. This surviving spouse wanted her claim against the trust satisfied, although the primary trust asset was a closely held business partially owned and totally operated by the children of the first marriage and the decedent's brother. We worked closely with counsel for the spouse and separate counsel for the children to retain the business and achieve a settlement among the various parties, thereby avoiding litigation which would have been severely detrimental to the business.
- Our lawyers have represented clients in succession planning for closely held corporations, which not only requires legal and business experience but also skill in dealing with family and personal issues. As an example, we represented a business in the transfer of equity ownership and control to the sole owner's children in an equitable manner, despite a complicated family situation involving several children who were involved in the business, spouses of other children who were involved in the business, and other children who were not involved in the business. We helped the clients establish dynasty trusts to hold voting stock for the children involved in the business and to provide non-voting stock and other assets for the children who were not involved in the business, with parity for a child's spouse who was involved in the business. This highly negotiated transaction resulted in a comfortable working arrangement for the entire family because all felt that they had been treated fairly.
- We have assisted owners of family businesses to structure tax-efficient transfers of wealth to younger generations. In one matter, the group assisted in the transfer of substantial blocs of stock in a family business into grantor-retained income trusts (GRITs). We subsequently represented the family business owners in the sale of the business for \$100 million resulting in enhanced tax benefits to the business and its owners due to the prior estate planning. Although the use of GRITs has since been limited by changes in the tax laws, our clients now benefit from other techniques that accomplish transfers of wealth to younger generations with similar tax savings, such as grantor-retained annuity trusts (GRATs) and family partnerships.
- We represented a family in a claim against a lawyer who had allegedly been negligent in administering the estate of the family patriarch. After extensive discovery and preparation of expert opinions, the family obtained a settlement for the limits of the lawyer's professional liability coverage. We then developed a plan to make transfers to new trusts which salvaged the overall plan of the patriarch and, over the life of the trusts, will save in excess of \$40 million of generation-skipping transfer taxes.
- Through the use of sales to grantor trusts, we effectively transferred 70 percent of the value of a closely held business worth between \$50 million and \$200 million to trusts for younger generations, resulting in family estate and gift tax savings of over \$50 million.
- Through the use of GRATs, we assisted a family in transferring the majority of a closely-held family owned business from the second generation to the third generation, saving in excess of \$10 million in transfer taxes.
- We have helped create (and continue to administer) numerous private foundations as well as many supporting organizations for clients with charitable inclinations.
- Our lawyers have assisted clients with Internal Revenue Service audits focusing on the issue of farm losses. In all of these matters, our clients have achieved a positive result, with no additional income tax due. We have also represented many families with estate

tax audits and have a strong working relationship with IRS agents.

- We assisted with a restructuring of family trusts so that the family lines without grandchildren received early distributions that were not subject to the generation-skipping transfer tax, while the family lines with grandchildren received the assets that were exempt from the generation-skipping transfer tax. The tax savings associated with this transfer exceeded \$10 million.
- We have represented a number of families to reform trusts to permit use of a "total return" approach, where appropriate under state law, which has permitted trustees to make annual distributions equal to a fixed percentage of the value of the trust, rather than traditional trust accounting income. This has enabled the trusts to avoid selling highly appreciated equities in order to invest in fixed-income securities.

## INSIGHTS

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### Publications

#### **LatAm: Tax authorities address negative effects of the pandemic on national coffers**

12 August 2021

The tax authorities' revenue-generating approaches vary from incentives to additional taxation.

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#### **Gift opportunities before year-end**

9 September 2020

Opportunities to consider ahead of potential changes to the gift and estate tax laws.

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### Events

#### Previous

#### **Round table on transactions, taxes and trust and estate planning**

19 November 2020 | 12:30 EST

Webinar

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## NEWS

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#### **Andrew Katzenberg selected as a Fellow of the American College of Trust and Estate Counsel**

31 March 2020

DLA Piper is pleased to announce that Andrew Katzenberg has been selected as a Fellow of the American College of Trust and Estate Counsel (ACTEC).

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#### **Marianne Schmitt Hellauer named to the *Daily Record's* 2020 Top 100 Women list**

11 March 2020

Marianne Schmitt Hellauer was named to the *Daily Record's* 2020 list of Top 100 Women.

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