



LAW OFFICE OF GERALD R. NOWOTNY, PLLC

Take A Chance on Me! – Tax Planning During the Biden Administration

I have been posting my articles on JD Supra since August 2012. I am grateful to JD Supra for helping me to spread the tax gospel of Nowotny to readers. As of today, my articles have had 523,887 views. If my Mom and Dad (of blessed memory) were still with us, I would attribute the views to them. My articles are always a little quirky but usually offer something new to say. Prior to the Pandemic, my marketing was limited to articles. I've spent more on marketing since the pandemic. than all the prior years combined. My justification was that the investment was necessary to become a "contender."

My professional background is not as straight-forward as the traditional attorney who went to law school and has only practiced law. After graduating from West Point and serving in the Army, I went to law school and completed the JD and LL.M programs at the University of Miami while working in the life insurance industry full time. After completing law school and admission to the Bar, I stayed in the financial services industry for better or worse. In 1999 I began my journey in private placement life insurance (PPLI) where I worked for two life insurance companies and a large insurance broker (Marsh) before going out on my own implementing high net worth and institutional solutions using private placement insurance products.

In 2012, I began the path towards practicing law on a full-time basis. Due to my experience in the financial services sector, I understand life insurance products in a way that other attorneys do not. It only makes sense that this would be the case. My law practice is largely built around a portfolio of niche tax strategies - (1) Private Placement Life Insurance and Annuities (from A to Z); (2) Malta Pension Plans; (3) Customized Pooled Income Funds and charitable tax strategies; (4) Puerto Rican Tax Incentives (without having to move to Puerto Rico); (5) Advanced tax deferral and reduction implementing multiple strategies together into a single integrated tax plan.

High net worth taxpayers have expected the worst regarding tax increases with the new administration and so far, the Biden administration has expressed its intent to meet taxpayer expectations. The Administration has taken direct aim at all the traditional advanced planning techniques such as sales to intentionally defective trusts and grantor retained annuity trusts et al. State governments on both coasts are fulfilling their promises to raise taxes as well. Frankly, the picture is ugly! The Department of Treasury is begging Congress for money for tax enforcement. My East German father (of blessed memory) of blessed memory would say that soon the IRS and tax enforcement will start to resemble the Stasi, the former East German version of the Russian KGB.

My view is that all the planning strategies that I promote appear to survive the proposed tax law changes unscathed. If you are satisfied with the amount of taxes that you are paying and feel a patriotic duty to pay more than your fair share, you can stop reading here.

The Big Picture – An Overview of Strategies

I am famous for handing over the playbook for my description for clients and competing advisors. The purpose of this article is to say that not only are we surprisingly good at coming up with good planning ideas, but we are also surprisingly good at implementing those ideas as well. We are asking reader as the lyrics of the Abba say to *Take a Chance of Me*. This series of articles will highlight the niche strategies that we advocate and implement for clients. Clients need these strategies now more than ever. This section briefly introduces the primary strategies. Subsequent articles will discuss each strategy in detail.

A. Private Placement Life Insurance and Annuities

Your neighbor, the life insurance agent was correct. Life insurance and annuities are the most tax-advantaged investment structures on the Planet. These products are no-load (no commission) life insurance products that allow the policyholder to customize investment options. The tax planning opportunity is structuring investments within the policy so that tax inefficient investments, e.g., investment income taxed at the highest rates, is repositioned on a tax-free basis. Additionally, individually owned low basis assets may be sold and repositioned on a tax efficient basis within the policy. The difference is investment income that is taxed versus investment income that is not taxed. You decide which is the better scenario.

B. Malta Pension Plans (MPP)

The MPP is an individual retirement plan that resembles the Roth IRA except that the MPP does not have any contribution limits and is not limited to cash contributions. The MPP allows for distributions as early as age 50 and provides for substantial tax-free distributions. The Plan is effectively self-directed through a client-designated investment advisor who may implement the participant's investment choices.

C. Pooled Income Funds (PIF) – The PIF resembles the charitable remainder trust (CRT) in many ways, but not exactly. In the current environment, the PIF produces a higher tax deduction and is not subject to the limitations of the CRT. For example, the PIF is not subject to excise taxation on unrelated business taxable income. The PIF is not subject to the four tier distribution rules of the CRT. The PIF is not subject to the ten percent minimum value of the remainder interest rule.

As a result, it is possible for a taxpayer to contribution a long-term capital gain asset without gain and reinvest the proceeds in a manner so that the income distributions to the income beneficiary are received tax-free. We can also structure the charitable gift so that the deduction is not limited to the 30 percent AGI threshold. However, you must call me up to find out how!

D. Puerto Rican Tax – It is well known to my readers that I am a big Latin music fan particularly Afro-Cuban music aka Salsa. Also, I was a Spanish and Portuguese major at the U.S. Military Academy. It is only natural that I would gravitate to a Puerto Rican tax strategy. The reality is that most people do not have the will or interest to move to Puerto Rico fulltime to take advantage of the tax incentives under Puerto Rican law. Everybody has a need for taxation at four percent instead of fifty percent. You can call on me to find out how! Take a chance on me!

Summary

Like many people, I have held onto the music of my youth. One of the great memories from the decade of the 1970's is the music of ABBA. The Broadway musical Mamma Mia helped to deliver the music of ABBA to a new generation. Arguably, the story plot is incredibly weak, but the music carries the day. Their hit song *Take a Chance on Me* is the takeaway message from this article. We do “niche” and “cutting edge”. While we have a legal and moral obligation to comply with tax law, we have discretion on how much to pay towards that obligation. When you implement some of the available strategies, the amount and timing of the payment become option to the taxpayer. Additionally, an internship in the “Big House” is not part of the deal!

The choice to pay high taxes is optional. Various niche strategies alone or in combination can provide tax deferral and convert income and capital gains into tax-free income outside of the taxpayer's taxable estate and beyond the reach of creditors. *Take a chance on Me!*