Understanding Foreign Nationals

U.S. Citizen Married to Foreign National

Fact Pattern

- Brian, age 50, is a successful business owner and lives in Florida with his wife Jennifer and their three children. While Brian and the children are U.S. citizens, Jennifer is a Taiwanese national with a "green card" and has no immediate plans to become a U.S. citizen.
- Brian and his family rely on income from his business to support their lifestyle. The children are also employed by the business which is currently valued at $25 million.
- It is Brian's desire to keep the business in the family and for the children to inherit the business following his and Jennifer's passing.

Issues/Concerns

- Following Brian's death, Jennifer will continue to rely on the business to support her lifestyle.
- Brian's estate will not be entitled to the unlimited marital deduction because Jennifer is not a U.S. citizen. Any amount received by Jennifer that exceeds Brian's available estate exemption amount would result in a current estate tax liability unless she becomes a U.S. citizen prior to the estate tax return due date or the excess amount is transferred to a qualified domestic trust (QDOT).
- If a QDOT is used, it will only defer the estate taxes during Jennifer's lifetime. The taxes will be due following Jennifer's death.

Option 1: Do nothing

Without planning, Brian's estate faces a potential estate tax liability of $7,882,200. The potential liability exceeds 30% of the value of the business and could lead to a forced liquidation.

Option 2: QDOT (at Brian's death):

- Transfer Brian's available estate exemption amount ($5,430,000) outright or in trust for Jennifer's benefit.
- Transfer the remaining assets to a QDOT for Jennifer's benefit.
- The potential estate tax liability is not solved but simply deferred until Jennifer's death.

Option 3: Life Insurance (during Brian's lifetime):

- Brian makes annual lifetime gifts, outright or in trust, for benefit of Jennifer.
  - The super-annual exclusion amount ($147,000) is available for gifts to a non-U.S. citizen spouse.
  - The use of an irrevocable life insurance trust is preferred as this technique would also avoid possible estate tax at Jennifer's death.
- Jennifer uses a portion of the annual exclusion gifts to buy life insurance on Brian's life.
  - Secure Lifetime GUL 3 can be utilized for this purpose.
  - An annual premium of $94,492* would guarantee a death benefit of $10 million

Results/Benefits:

- Following Brian's death, life insurance death benefit is received free of income and estate taxes.
- Death benefit is available to support Jennifer and the children.
- Death benefit also provides liquidity to meet the eventual estate tax obligation.

*Premium based on Male, 50, Preferred Non-tobacco, no-lapse guarantee premium for $10,000,000 level DB guaranteed to Age 121.

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