Gifts of Retirement Plan Assets

Date: November 17, 2016
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Agenda
• Retirement fund basics
• Gifts of retirement funds during life
• Gifts of retirement funds at the end of life
• Questions

Potential for Retirement Fund Gifts

Retirement assets of all types $24.4 trillion
IRAs $7.5 trillion
401(k) plans $4.9 trillion

Retirement funds constitute ~27% of household wealth

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Gifts of Retirement Plan Assets
Retirement Fund Basics

- Defined contribution plans
  - IRAs (traditional, Roth, SEP, Simple)
  - 401(k)s, 403(b)s, Keoghs
  - Potential source of charitable gifts
- Defined benefit plans
  - Government pensions
  - Some company plans, but fewer and fewer
  - Not a potential source of charitable gifts

- Can take distributions starting at age 59½
- Must take distributions starting at age 70½
- Required minimum distributions (RMD)

- Plan income and realized gains not taxed
- Withdrawals taxable as ordinary income
- When remaining assets passed to heirs through estate, subject to estate tax AND income tax
  - Estate tax deductible from income taxable amount
  - Total tax still can be 60% or more
Lifetime Gifts to Be Discussed

1. Withdraw retirement funds and give cash
2. Charitable IRA Rollover
3. Combination of appreciated property gift and retirement fund distribution
4. Combination of gift with a Roth IRA conversion
5. Fund a gift annuity with a retirement plan distribution
6. Divide an IRA into two IRAs and structure one like a gift annuity

1. Withdraw Retirement Funds and Give Cash

- Withdraw funds from retirement plan
  - Declare withdrawal as income on tax return
- Give cash to charity
  - Take offsetting charitable deduction
- Deduction can completely offset income
  - Donor must itemize deductions
  - Deduction must not be reduced because of AGI limitations, Pease limitation
  - Donor must not live in state that doesn’t allow charitable deductions (e.g., MA)

1. Withdraw Retirement Funds and Give Cash

- Reasonable to give RMD funds to charity
  - Had to withdraw them anyway
- In general, better from a tax standpoint to give other assets – cash, appreciated stock, etc. – than to give retirement assets beyond RMD
  - Retirement assets not taxed while in plan
  - Can earn income and realize gain tax-free until withdrawn
2. Charitable IRA Rollover

- Created by Pension Protection Act of 2006
- Expired and then renewed several times through 2014
- Made permanent by PATH Act signed December 18, 2015

2. Terms of IRA Rollover

- Minimum age – 70 1/2
- Maximum amount – $100,000
- Not permitted to private foundation, supporting organization, or donor advised fund
- Not permitted for life income plan
- Can fulfill a pledge
- Counts toward RMD
- Beneficiary of inherited IRA can do rollover

2. Beneficial to Donors Who:

- Do not itemize deductions
- Would lose deductions with increase in income
- Already contribute 50% or more of income
- Live in a state with an income tax that does not permit itemized deductions (e.g., MA)
- Like the simplicity of making gift directly from an IRA
2. Not So Appealing to Donors Who:

- Live in a state that exempts all or a portion of retirement distributions and allows itemized deductions on state return
- Could contribute appreciated securities and deduct full amount
- Have an uncooperative IRA administrator

2. Possible Expansion of Charitable IRA Rollover

Legacy IRA Act (HR 5171, introduced May 2016)

- IRA owners 65+ can rollover up to $400,000 to a CGA, CRAT, or SCRUT.
- IRA owners 70½+ can rollover up to $400,000 to a CGA, CRAT, or SCRUT, with $100,000 cap on outright rollover within the $400,000.
- All payments from the life income plan would be taxed as ordinary income
- Only donor and/or donor’s spouse can be beneficiaries

Grow Philanthropy Act (HR 4907, introduced April 2016)

- Allows charitable IRA rollover to a donor-advised fund
- Fidelity, Vanguard, Schwab, etc. are big fans

HR 5171 and/or HR 4907 could be attached to a year-end tax bill . . . or not.
3. Combination of Appreciated Property Gift and Retirement Fund

- John invests $50,000
- Charities receives $50,000 in FMV
- $10,000 cost

4. Funding a Gift Annuity With a Retirement Fund Distribution

- Martha contributes $C
- IRS withholds 100,000 - $C for taxes
- Contribution to charity: $100,000

4. Comparative Results

Current law (withdrawal, reserve portion for taxes, contribute balance)
- After-tax annual cash flow: $3,851
- Contribution to charity: $76,809

If Legacy IRA Act enacted
- After-tax annual cash flow: $3,618
- Contribution to charity: $100,000
5. Divide IRA Into Two IRAs; Treat One Like a Gift Annuity

IRA (1) $700,000
Withdrawals as required
Brian
Children the beneficiaries

IRA (2) $100,000
Withdrawals equal to CGA rate
$5,500/yr
Brian
Charity the beneficiary

In Summary . . .

• Charitable IRA rollover beneficial to many donors and easy to market, but . . .
• There are many other attractive ways to make lifetime gifts of retirement funds, and . . .
• Unlike the IRA rollover, they are not limited to IRAs

End-of-Life Gifts to Be Discussed

1. Charity named as beneficiary of all or a portion of an IRA or other retirement plan
2. Fund CRT for survivor(s) with all or a portion of remaining retirement fund assets
3. Fund gift annuity for survivor(s) with all or a portion of remaining retirement fund assets
4. Back up a pledge with remaining retirement funds
1. Charity Named as Beneficiary of All or a Portion of an IRA or Other Retirement Plan

- $6 million estate
- Give IRA to charity
  - No income tax
  - No estate tax
- Define distribution as
  - % of remainder, or
  - (target/remainder) x target
- Charity & individual benes
  - Cash to charity by 9/30 of year after death
  - Individuals can then stretch-

Alvin’s IRA

Charity

$500,000

1. End-of-Life Gift – Option A

Alvin gives $500,000 from his general estate to charity and the IRA to his children.

<table>
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<tr>
<th>Description</th>
<th>Amount</th>
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<td>Estate tax savings</td>
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<td>Total tax savings</td>
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<tr>
<td>Net cost of gift</td>
<td>$300,000</td>
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</tbody>
</table>

1. End-of-Life Gift – Option B

Alvin (35% income tax bracket) gives his IRA to the charity and other assets to his children.

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<thead>
<tr>
<th>Description</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Estate tax savings</td>
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<tr>
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<tr>
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</table>
1. End-of-Life Gift – Cautions

- IRA distribution must be directly to the charity
- IRA administrator can require a lot of paperwork
  - May include requiring opening inherited IRA account, which requires highly personal info of a staff member
  - Push back on Inherited IRA account requirement. Not relevant to distributions to charity
  - Insist on talking to supervisor, if not getting satisfaction
  - Keep in mind that IRA gifts to charity are a tiny fraction of IRA distribution business
  - See 2-part article by Jeff Comfort in 6/16 and 8/16 issues of PGT

2. CRT for Survivors With All or a Portion of an IRA or Other Retirement Plan

    John’s IRA
     $500,000
     Charitable Remainder Trust
     Income $30,000
     Charity for purpose chosen by John

Marjorie

2. Tax Consequences

- Distribution from retirement fund not taxed as income to estate of donor or to trust
- Payments to beneficiary taxed as all ordinary income until funding amount has been reported per four-tier system
- Value of income interest included in taxable estate if beneficiary is not a spouse
2. Procedures

- Make the trust the beneficiary of the retirement fund
- Possible ways of creating trust:
  - Minimally funded CRT created during life
  - Living trust that converts to CRT at death
  - CRT established during life but not funded until death
  - CRT established pursuant to will

2. How to Handle Testamentary CRAT Funded with Multiple Distributions

- Trust deemed created at death
- All property passing to trust by reason of death considered one contribution
- See Treas. Regs. 1.664–1(a)(5)(i) and 1.664–1(a)(5)(ii) for rules on correcting under/over distributions

3. Gift Annuity for Survivors with All or a Portion of an IRA or other Retirement Plan

Mona's IRA

$300,000

Charity

Fixed Payments
$19,200

Residuum for charitable purpose chosen by Mona

Sister
Age 78

$19,200
3. Tax Consequences

- Distributions from retirement fund not taxed as income to donor’s estate or to charity
- Payments to beneficiary taxed entirely as ordinary income
- Value of annuity interest included in taxable estate unless spouse is the annuitant

3. Procedures

- Execute gift annuity agreement during donor’s life.
- Agreement states that payment amount equals amount received by charity multiplied by applicable rate given annuitant ages
- Name charity as beneficiary of all or a portion of retirement fund

4. Pledge Backed With Remaining Retirement Funds

- Pledge by Rod for campaign $1,000,000
- Paid during life $400,000
- Paid by beneficiary designation from retirement plan $350,000
- Paid from estate $250,000
Concluding Comment

The permanent availability of the charitable IRA rollover has created a dependable opportunity to market IRA gifts. However, keep in mind there are many other attractive ways to make retirement plan gifts, both during life and at death.

Questions?

Thank You!