

From: Eileen Alexanderson <[REDACTED]>
To: 'Jeffrey Epstein' <[REDACTED]>
Subject: FW: Leon Black Children-use of Gift and GST tax exemptions
Date: Fri, 14 Dec 2012 18:21:24 +0000

Are you good with this as a plan?

From: Clapp, Ada [mailto:[REDACTED]]
Sent: Friday, December 14, 2012 1:09 PM
To: Kirschner, Elyse; Eileen Alexanderson
Subject: RE: Leon Black Children-use of Gift and GST tax exemptions

Hi Eileen and Elyse,

Thanks for the email, Elyse. I know how pressed you are with year end planning.

Eileen should confirm but my understanding is that the children do not have \$5 million of assets in their own names (Ben has the IOU from the 1992 Trust and Josh could get one too I suppose). Given that fact, it sounds like McDermott is not recommending the LLC (so we do not need to discuss it). Please correct me if I am wrong but it sounds like you are advising that distributions be made from existing non-GST exempt trusts so that the children can re-gift and allocate GST exemption to new trusts this year.

Does it make sense to have the 2011 Trust give Josh a note for the payment it was planning to make before the decanting and to have Ben and Josh transfer their notes (up to the exemption amount) to new trusts? The other two children could receive a \$5 million distribution from their 2011 Trusts (which are not GST exempt-correct?) so they can transfer to new trusts and allocate GST exemption. That treats the children somewhat equally and uses the smallest portion of assets that are already estate tax exempt. What do you think?

Time is getting a bit tight. Would it make sense for the three of us to have a call today?

Ada Clapp
Managing Director, Wealth Strategist
U.S. Trust Bank of America Private Wealth Management

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From: Kirschner, Elyse [mailto:[REDACTED]]
Sent: Friday, December 14, 2012 6:19 AM
To: Clapp, Ada

Cc: Eileen Alexanderson

Subject: RE: Leon Black Children-use of Gift and GST tax exemptions

I am I could not respond yesterday. I was in meeting most of the day.

I told Eileen that we had suggested the LLC plan for other clients who did not currently have appropriate liquid assets to transfer to a trust, but that I wasn't sure it made sense here because we did not know if all of the children would generate enough of their own liquid assets to repay the note. If you want to discuss your specific questions anyway, we can do so later today.

Clearly, the best solution would be to find \$5 million of assets each of the children have in their own name, have them make gifts to the trusts and allocate their GST exemptions to those trusts. If they don't have such assets, and the children would end up "wasting" their \$5 million gift tax credits, then I agree that the next best solution would be to distribute assets out of the non-GST exempt trusts, have the children gift them to new trusts, and allocate their GST exemptions to those new trusts.

Elyse G. Kirschner | Partner
McDermott Will & Emery LLP | [REDACTED]

From: Clapp, Ada [mailto:[REDACTED]]

Sent: Thursday, December 13, 2012 9:59 AM

To: Kirschner, Elyse

Cc: Eileen Alexanderson

Subject: Leon Black Children-use of Gift and GST tax exemptions

Hi Elyse,

I was speaking with Eileen earlier about the plan for Leon's children to make exemption gifts by year end. I understand that you are considering having the 4 children create an LLC and in exchange for a 25% interest, they would each give the LLC his or her promissory note for \$5 million. Thereafter, they would each transfer a 25% interest in the LLC to a new 2012 Trust.

I have a few questions about this proposal and one big concern.

It is my understanding that only one or possibly two of the children have any real entitlement to assets at this point—that is Ben and possibly Josh in respect of the distribution they should have received from the 1992 Trust. I also understand that Alex and Victoria do not have sufficient assets to make a promissory note from them a viable alternative, as they would not be creditworthy borrowers. Since there is no collateral and no other assets from which a lender could reasonably expect repayment, I am afraid the IRS will not view the exchange of their notes for LLC interests as a bona fide loan. Rather I am worried that the IRS will argue that Ben and Josh—who are creditworthy—made a gift to their siblings of 50% of the value of the LLC (or \$5 MM, as the LLC would only be valued at \$10 million in this scenario). Could Trustees guarantee their notes? Would they want to without charging a fee?

Assuming everyone's note is valid, how do you value the LLC? Would you simply not take a discount, assume the notes are all valued at face and therefore assume everyone's note is valued at \$5 million? Or are you suggesting a formula gift to be followed by an appraisal later (in which case, are you not concerned about the Service's non-acquiescence in Wandry?). Can you even acquire an interest in an LLC that has nothing in it on an installment basis?

I can understand the benefit of using the exemptions for Ben and possibly Josh, who now have (or may have) significant assets and won't want for anything. I wonder though whether it makes sense to do this exercise for Victoria or Alex, who may not generate sufficient wealth of their own to give away \$5 million of assets. With the LLC idea, you will have to pick up and report interest income each year and then find the funds for the children to pay the tax.

If there is a possibility of making a distribution from an trust that is not-GST exempt, it might make sense to do that in order to have the children re-gift it to a new trust to allocate GST exemption. Even though we may just be trading one gift tax exemption for another, there is real value in protecting the funds from GST tax.

Please let me know if you have some time to discuss tomorrow.

Best regards,

Ada Clapp

Managing Director, Wealth Strategist

U.S. Trust Bank of America Private Wealth Management



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