Allianz

Allianz Life Insurance Company of North America

Life Advanced Markets Intel May 2022 Strategic Insights

Stay in the know
follow *David Foster*
on LinkedIn

from David Foster, Senior Director of Advanced Markets

With his ongoing LinkedIn series, David keeps you up to date on trends and opportunities for fixed index universal life insurance in estate planning strategies, taxation, business strategies, and more.

This month's topics (click on each to read)

FLEXIBLE ESTATE PLANNING STRATEGIES

- An estate tax clawback? The IRS says no, then yes ... maybe ... | 5.5.22

LIFE INSURANCE STRATEGIES

- New IRS rules may favor taxable IRA distributions | 5.12.22

Allianz Life Insurance Company of North America (Allianz) does not provide financial planning services.

FIUL provides a death benefit that is generally paid income-tax-free to beneficiaries.

FIUL requires qualification through health and financial underwriting.

Product and feature availability may vary by state and broker/dealer.

Guarantees are backed solely by the financial strength and claims-paying ability of Allianz Life Insurance Company of North America.

Products are issued by Allianz Life Insurance Company of North America, 5701 Golden Hills Drive, Minneapolis, MN 55416-1297. 800.950.1962. www.allianzlife.com

AMK-635 (R-6/2022) **For financial professional use only – not for use with the public.**

An estate tax clawback? The IRS says no, then yes … maybe … | 5.5.2022

- **If a taxpayer makes a lifetime gift at a time when the applicable exclusion amount is higher than it is when they later pass away, there's a question as to whether or not an estate tax will be levied on the difference.**
- **In 2019, the treasury published regulations essentially saying there will NOT be a clawback in this situation.**
- **However, new proposed regulations issued this year have stated the clawback WILL apply in certain situations.**
- **If you work with clients who have made, or are considering making, substantial lifetime gifts, it may be prudent to work with their tax and legal professionals to address the new rules.**

Introducing the IRS version of Abbott & Costello's "Who's on first?" *https://www.youtube.com/watch?v=kTcRRaXV-fg* – The comedy duo's classic routine about misunderstanding and confusion. (And you thought the IRS didn't have a sense of humor.)

The treasury recently released proposed regulations addressing what is referred to in the estate planning field as "clawback." In simple terms, if a taxpayer makes a lifetime gift at a time when the applicable exclusion amount (e.g., the unified credit or gift/estate tax exemption) is higher than it is when they later pass away, there's a question as to whether or not an estate tax will be levied on the difference.

For example, if you make an $8 million gift when the exemption is $12.06 million, then pass away when the exemption has dropped to $6 million – will there be an estate tax on $2 million?

In 2019 the treasury published regulations essentially saying there will NOT be a clawback in this situation. IRS guidance was needed because the 2017 Tax Act temporarily raised the exemption to $10 million ($12.06 million in 2022) and it is scheduled to revert back to the lower exemption in 2026. A lot of affluent families who were interested in lifetime gifting strategies needed to know what the tax results would be if they used their exemption for lifetime gifts only to see the exemption drop prior to their death. So far, so good; no clawback, so no problems.

But wait …

New proposed regulations (REG-118913-21) issued on April 26 of this year have muddied the waters a bit, stating the clawback WILL apply in certain situations. The details are too complex for the brief recounting here, but financial professionals should be aware that certain lifetime gifts may result in substantially different tax results than others. A clawback situation may be created for lifetime gifts involving promissory notes, grantor-retained annuity trusts, or any gifts that turn out not to be considered completed gifts under the tax laws (e.g., when the IRS makes a successful IRC 2036 challenge because the deceased retained too much control over an asset).

These regulations defining the "exceptions to the exceptions" of the IRS guidance (i.e., the IRS version of "Who's on first?") are not final as of right now – but if you work with clients who have made, or are considering making, substantial lifetime gifts, it may be prudent to work with their tax and legal professionals to address the new rules.

Learn more about the importance of flexible estate planning strategies using fixed index universal life insurance.

New IRS rules may favor taxable IRA distributions | 5.12.2022

- **IRS rules levy an additional income tax on early withdrawals (generally prior to age 59½) from qualified retirement plans, IRAs, and annuities – equal to 10% of the amount that can be included in gross income.**
- **One of the exceptions to this 10% additional tax is for distributions that are part of a series of substantially equal periodic payments made for the life of the employee, or the joint lives of the employee and designated beneficiary.**
- **IRS Notice 2022-6 amends the rules to specify the interest rate that may be used to calculate the SEPP payments cannot exceed the greater of 5%, or 120% of the federal mid-term rate.**
- **Given current historically low income tax rates, and the potential of higher tax rates in the future, some clients may find it advantageous to take taxable distributions out of their IRA and reallocate them to assets that provide tax-deferred growth.**

Changes made to the substantially equal periodic payment (SEPP) rules in IRS Notice 2022-6 allow for significantly greater penalty-free distributions from qualified plans, IRAs, and nonqualified annuities.

IRC Section 72(t) levies an additional income tax on early withdrawals (generally prior to age 59½) from qualified retirement plans, IRAs, and annuities – equal to 10% of the amount that can be included in gross income.

However, one of the exceptions to the 10% additional tax is for distributions that are part of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the employee, or the joint lives (or joint life expectancies) of the employee and designated beneficiary.

Payments are considered to be substantially equal periodic payments under section 72(t)(2)(A)(iv) if they are made in accordance with one of three methods: (1) the required minimum distribution method; (2) the fixed amortization method; or (3) the fixed annuitization method.

Previously, the interest rate used in calculating SEPP payments was limited to 120% of the federal mid-term rate. Notice 2022-6 amends the rules to allow the interest rate that may be used to apply the fixed amortization method or the fixed annuitization method as any interest rate that is not more than the greater of (i) 5% or (ii) 120% of the federal mid-term rate for either of the two months immediately preceding the month in which the distribution begins. The higher interest rate equates to substantially higher 72(t) or 72(q) permissible distributions.

With current historically low income tax rates, and the potential for higher tax rates in the future, some clients may find it advantageous to take taxable distributions out of their IRA and reallocate them to assets that provide tax-deferred growth with the potential to access distributions income-tax-free.

With the changes in IRS Notice 2022-6, financial professionals may want to revisit this strategy with clients. Clients should also consult with their tax advisor to discuss what may be appropriate for their situation.

Learn more about advanced marketing strategies and concepts from Allianz.

For help in leveraging our Advanced Market Intel to grow your business, contact the **ADVANCED STRATEGIES AND PLANNING PLATFORMS TEAM** at 800.800.3220 or AdvancedStrategies@allianzlife.com.

This content is for general educational purposes only. It is not intended to provide fiduciary, tax, or legal advice and cannot be used to avoid tax penalties; nor is it intended to market, promote, or recommend any tax plan or arrangement. Allianz Life Insurance Company of North America, its affiliates, and their employees and representatives do not give legal or tax advice. Customers are encouraged to consult with their own legal, tax, and financial professionals for specific advice or product recommendations.