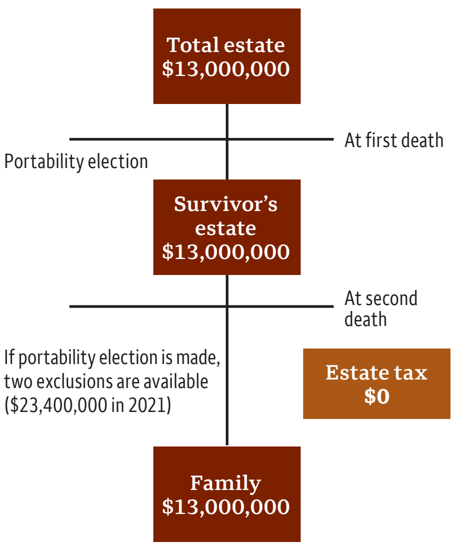
WELLS FARGO Advisors

Portability

Estate planning quick facts



"Portability" is an estate tax planning strategy for married couples. For 2021, the estate tax "basic exclusion" is $11,700,000. This amount will continue to be indexed to inflation in future years, but is scheduled to "sunset" after 2025, essentially reducing it by one-half. Married couples do not automatically get a double exclusion. But a special tax election, commonly referred to as a "portability" election, allows the transfer of any "unused" estate tax exclusion from a deceased spouse to a surviving spouse. This potentially allows the surviving spouse to protect a much greater amount from estate tax at the second death. (An alternative strategy, the credit shelter trust, is discussed in a companion fact sheet.)

Here's how portability generally works:

- Advance planning is not required.
- Assets are left to the surviving spouse in a manner that does not use the estate exclusion of the deceased spouse. This could be in the form of a transfer under a will, revocable trust, beneficiary designation, or transfer-on-death designation, or via joint tenancy with right of survivorship. Or, the transfer could be through a trust that qualifies for the marital deduction.
- The deceased spouse's executor files a timely estate tax return (even if a return would not otherwise be required, due to the estate size). In general, the estate tax return is due nine months (plus extensions) from the date of death. However, effective June 9, 2017, for estate tax returns filed solely to make the portability election (i.e., the value of assets at death plus prior taxable gifts do not exceed the applicable exclusion), the executor has two years from the date of death to file.
- The surviving spouse's taxable estate will be increased — but if the portability election is made, the surviving spouse will also have a larger estate tax exclusion.
- The "ported" exclusion can be used by the surviving spouse to cover lifetime gifts, or otherwise offset assets remaining in the estate at death.
- The portability election is only available for a spouse who died after December 31, 2010.

Portability carries significant drawbacks and risks. For example:

- If survivors do not file a timely estate tax return, this planning opportunity will be lost, potentially resulting in a larger estate tax at the second death.
- The surviving spouse can only use the additional exclusion from his or her "most recently deceased" spouse. If the survivor remarries and outlives another spouse, the transferred exclusion may be lost.
- The value of the transferred exclusion is fixed. Any growth in value of the transferred assets will be part of the surviving spouse's taxable estate.
- While the basic estate tax exclusion is transferable, the generation-skipping tax (GST) exemption is not.
- With limited exceptions, state exemptions are not portable, so specific trust planning to fully utilize them may still be required. State laws change frequently, so it's important to work closely with an attorney in your state as you review estate strategies.

Portability has both advantages and disadvantages. It may work well for some couples, but not others. It's important to work with your attorney and tax adviser to create an overall estate plan that is both tailored to your personal situation and flexible enough for changing tax laws.

Talk to Wells Fargo Advisors

We welcome the opportunity to work with you to help you achieve your planning goals. Contact us for more information and to learn about how we can assist you.