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These Are Uncertain Times for Estate Planning

We recently issued an alert related to proposed regulations under Section 2704(b) of the Internal Revenue Code that would seemingly restrict valuation discounts for interests in many family-controlled businesses for gift and estate tax purposes. These restrictions would reduce the effectiveness of some estate planning techniques used under current law.

Since that time, there have been recent developments that have left practitioners and families with uncertainty regarding not just valuation discounts, but also with respect to the income, estate and gift tax system as a whole, of which we want to make sure you are aware.

Valuation Discounts

When proposed regulations under Section 2704(b) were issued on August 2, 2016, commentators and practitioners largely concluded that discounts associated with lack of control and lack of marketability would be eliminated or greatly reduced. Recently, Catherine Hughes, an attorney advisor with the Treasury Department's Office of Tax Policy, indicated that the IRS did not intend to eliminate the discounts that have normally applied due to lack of control and/or lack of marketability where supported by state law. Rather, the intent behind the proposed regulations was to suppress discounts that arise from limitations imposed under operating agreements, partnership agreements and other governing documents that have the effect of increasing discounts that could be taken on the transferred interests. Hughes emphasized that the Treasury does not intend to eliminate or reduce all discounts.

The IRS public hearing on the proposed regulations is scheduled to be held December 1, 2016, at which time there may be additional insight into the intent and effect of the proposed regulations. Although significant uncertainty still exists, it appears more likely that traditional discounts may still be

available and that any changes will not be made until at least 2017, if they are made at all.

Election of Donald Trump and Republican Congress

Republican Donald Trump was elected as our 45th president, and Republicans will also control the Senate and House of Representatives. The combination makes it more likely that President-elect Trump's tax proposals will be enacted.

Although Trump's tax agenda is not yet clear, he has proposed a complete repeal of the federal estate tax, as well as significant income tax changes.

Estate Tax

The proposed repeal of the federal estate tax creates uncertainty for individuals, families and estate planning practitioners. For instance, there is no guidance on when the repeal of the estate tax could take effect. There is also the possibility that a different form of death tax could replace the estate tax. For instance, the estate tax may be replaced with a system that taxes embedded appreciation on assets at death (or on a later sale of such assets) with certain exemptions (e.g., the first \$10 million of gains may be exempted). This change would significantly alter planning techniques in an effort to avoid capital gains tax, rather than estate tax. Additionally, while the estate tax may be repealed under President-elect Trump, there is the possibility that it could be re-enacted in the future.

Income Tax

Trump's income tax proposal calls for, among other things, reducing the marginal income tax rates for all individuals and businesses, increasing standard deduction amounts, capping itemized deductions, repealing personal exemptions, and repealing individual and corporate alternative minimum taxes (AMT).

The proposed tax reform creates three individual ordinary income tax brackets, while maintaining the current capital gains tax rates:

Ordinary Income Tax Rate	Capital Gains Tax Rate	Single Filers	Married Joint Filers
12%	0%	\$0 to \$37,500	\$0 to \$75,000
25%	15%	\$37,500 to \$112,500	\$75,000 to \$225,000
33%	20%	\$112,500 +	\$225,000 +

Under Trump's tax plan, the standard deduction will increase from \$6,300 to \$15,000 for single filers and from \$12,600 to \$30,000 for married couples filing jointly. Trump also proposes capping itemized deductions at \$100,000 for single filers and \$200,000 for married couples filing jointly. Additionally, with the proposed repeal of the Affordable Care Act, the 3.8 percent net investment income tax (NIIT) on investment income would be repealed.

What This Means to You

The income, estate and gift tax systems are currently in a state of flux. Individuals, families, businesses and practitioners are left to contemplate what changes they should make to estate plans that are in place or currently in process, as well as what actions they should take now to potentially reduce income tax liability. For instance, it may be prudent to defer capital gains until next year to the extent possible, while incurring capital losses this year. Moreover, individuals who are charitably inclined may want to consider making charitable gifts now to avoid the proposed limits to itemized deductions under Trump's income tax plan.

While there is much uncertainty about the future of the income and estate tax system, individuals and families should consider what action is best for their particular situation.

Contact Us

For more information on how the proposed changes may affect your estate or business succession plan, please contact a member of Husch Blackwell's Private Wealth team.