Lowenstein Sandler

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TRUSTS & ESTATES

WILL TRUMP'S TRIUMPH TRIM TAXES? WHAT YOU SHOULD KNOW NOW

The election of Donald J. Trump as the 45th president of the United States is likely to bring significant shifts in economic and social policy for the country, including major changes in federal tax policy.

It is far too early to tell what will occur during the Trump administration. We have not yet seen specific legislative proposals. However, we think now is a good time to advise you about some of the general concepts the president-elect has endorsed and to suggest steps you should consider now to address those potential changes.

Income Tax Planning

Many tried-and-true strategies are even more important this year because of the president-elect's tax agenda. His website sets out proposals for, among other things, reducing income tax rates on individuals and businesses, eliminating the alternative minimum tax, and jettisoning the 3.8 percent net investment income tax (which may be repealed as part of the reform or repeal of the Affordable Care Act – aka, "Obamacare").

While this is not a comprehensive list, here are tax-planning strategies you should consider in anticipation of changes to come next year:

Defer Income

To the extent possible, push taxable income into 2017, when it will probably be taxed at lower rates. For example, defer bonuses, consulting, and self-employment income. Should you defer selling assets and realizing capital gains until next year? That's a closer question. You should talk about that with your investment and tax advisors – the timing of sales should be driven primarily by investment considerations, although taxes are part of the equation.

Accelerate Deductions

It's particularly important to consider maximizing itemized deductions in 2016 – for example, pay state income taxes and real property taxes before year-end. That's because Mr. Trump's proposals include allowing taxpayers to take only $200,000 of itemized deductions in any one year. Further, deductions are worth more when tax rates are higher. Also, even under current law, many itemized deductions can be used only if they exceed certain minimums. So, bunch itemized deductions into 2016 to exceed those floors.

Contributions to Retirement Plans

Make sure you maximize the amount of deductible contributions you make to 401(k), profit-sharing, and pension plans, as well as individual retirement accounts, in 2016.

Hold Off on Roth IRAs

If you're considering converting a regular IRA to a Roth IRA, think about waiting until 2017. Generally speaking, you will pay an immediate income tax when you convert an IRA. Wait until next year when rates are likely to be lower.

Charitable Contributions

Make charitable contributions this year. Again, consider bunching 2016 and anticipated 2017 contributions and paying them before December 31. Also consider more sophisticated strategies such as the creation of private family foundations and certain types of "split interest" charitable trusts that give you an immediate income tax deduction, but preserve current or future use of the assets in the trust for you and your family.

Estate Tax

The Trump tax proposal includes a repeal of the federal estate tax. It appears that he is also suggesting a repeal of the federal gift tax and generation-skipping tax, although that is not yet as clear.

On the other hand, his proposals also include taxing the growth in value of a deceased person's assets. Current law provides a "step up" in the basis of appreciated assets at the owner's death. As a result, the deceased's family pays capital gains taxes only on the post-death appreciation in those assets and only when the assets are sold. While the Trump plan is yet to be determined, his proposal calls for either (i) imposing an immediate capital gains tax at death on the appreciation in a decedent's assets, or (ii) maintaining a "carryover" basis in those assets so capital gains tax is imposed when the family eventually sells the assets. In either case, the plan includes a $10 million exemption, but the scope of the exemption is not clear. (Is it on the value of the assets or the appreciation in the assets, per person or per married couple? Is there a separate, additional exemption for small businesses and family farms? How do the rule and the exemption apply to assets held in trust?)

Finally, it is important to bear in mind that any repeal of the estate tax may not be permanent. Depending on how the repeal is "budget scored" and the number of Senate votes favoring repeal, it is possible that any repeal would sunset after 10 years (which happened during the George W. Bush administration). Even without a sunset date, a new president and Congress could bring back the estate tax.

We believe that it is difficult, if not impossible, to plan specifically for estate tax changes now. We simply don't know how much, how, or when transfer taxes will be reduced or eliminated. It's not even clear that the estate tax will be repealed. Whether or not it is eliminated at all depends as much on political factors as tax policy.

That said, estate planning continues to be vitally important. Even in an estate-tax-free world, there are important reasons to consider lifetime gifts, creation of trusts, and many of the techniques that we employ for our clients. Preservation of wealth for multiple generations and protection against creditors, divorce, and certain types of income tax and philanthropic goals will continue to be vitally important. And, of course, you should continue to make sure that your basic estate planning documents – wills, revocable trusts, powers of attorney, and health care directives – are up to date. If your plan needs refreshing, we can build in provisions that address the possibility of changes in the estate tax rules.

We encourage you to discuss your family situation and goals with us. We can help you assess the potential impact of the Trump proposals on your planning and design strategies to accomplish your real-world goals with enough flexibility to take tax changes into account.

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