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Personal Tax and Estate Planning Considerations for the End of 2016

The end of the year is always a good time for our clients to look at their personal tax and estate planning situation and consider whether to take any action before Dec. 31. This year, with the Trump administration about to control the White House alongside a Republican-controlled Congress, planning may require a bit of a crystal ball. We want to call your attention to a few issues to think about, and highlight a few concrete steps you can take, before the end of the year. Naturally, [we are available](#) to assist you in making or implementing your decisions.

What does the Trump presidency mean from a tax and estate planning viewpoint? It will take at least until Jan. 20 to know for sure, but much attention has been paid to the tax proposals in the president-elect's [Contract with the American Voter](#) and the House Republicans' [Task Force for A Better Way](#) to see how they match up. The key points that both proposals have in common, as they affect our tax and estate planning clients, include:

- Elimination of the estate tax, although the Trump proposal states that “capital gains held until death and valued over \$10 million will be subject to tax.” This statement does not state whether the tax will be imposed on death or at a later time when the beneficiaries sell the appreciated property. Neither proposal appears to eliminate the gift tax, although it is a possibility.
- Reduction of the maximum individual income tax rate to 33 percent. Remember, California and other states' income tax rates are not affected.
- New and fairly significant limitations on itemized deductions.
- Repeal of the 3.8 percent net investment income tax and continue the current low tax rates for investment income.
- Reduction of corporate tax rates.
- Taxation of “carried interest” income at ordinary income tax rates. But the reduction in the business tax rates offsets this provision to a large extent.
- Elimination of the alternative minimum tax.

Of course, it is difficult, if not impossible, to know what to do at this time. Will estate tax repeal be total, phased in over a period of time, or defeated? Will repeal be permanent, and if so, how “permanent” is permanent? Will the Senate significantly modify or block the Trump and House Republican proposals? At this point, no one knows.

What actions can be taken now in anticipation of the Trump presidency? Tax and estate planning experts throughout the country have been weighing in with their views on what might

happen in the tax world and what can be done now. Some of the ideas that we believe are most meaningful to our clients include:

- Estate planning: wait and see (but maybe not). While it would be unwise to modify an existing estate plan simply to anticipate estate tax changes that may or may not occur, clients who are in the middle of planning (e.g., to make year-end gifts using valuation discounts or for business succession purposes) might want to continue and implement their planning, but with a view toward the possibility of estate tax repeal. Estate planning is not all about taxes, and our clients' more sophisticated planning takes taxes into account but is often motivated by non-tax issues such as succession planning, consolidating family investment management and asset protection concerns, among others.
- Defer income and accelerate deductions. Since tax rates would be reduced next year, it would be smart to consider deferring income to be taxed in 2017 at, presumably, lower rates, and accelerate deductions to 2016 to reduce taxable income that would be taxed at higher rates and to take advantage of deductions that might disappear. The same thinking would apply to sales of capital assets: gains should be deferred to next year and losses should be harvested this year.
- Make your charitable contributions now. You might want to make larger charitable contributions this year to reduce taxable income that would be taxed at higher rates. If you have pledged to make future contributions, consider honoring those pledges now.
- Be prepared to review and possibly rewrite your existing estate plan. Of course, the action you take depends on what tax law changes are ultimately enacted. But if there is estate tax repeal, every estate plan should be reviewed, and a large percentage of those will require significant changes.

When considering anything discussed above, remember that we do not know what, if any, tax law changes will occur. The purpose for providing you with this information is to call to your attention some of the tax issues that will be created by the Trump presidency.

What actions can be taken now in any event? There are some typical end-of-year action items that each of our clients should consider without regard to any changes in the tax laws.

- Consider making annual exclusion gifts on or before Dec. 31. Each year you can give up to \$14,000 in value (e.g., cash, property interests, stock, etc.), or \$28,000 in value for gifts by a married couple, to an unlimited number of people. These dollar amounts are adjusted annually for inflation, but will remain at \$14,000 in 2017.
- Consider front-loading a 529 Plan. 529 Plans provide some exceptional income tax planning benefits for those who are putting aside funds for college. The investments held by a 529 Plan grow tax-deferred, and distributions to pay for the beneficiary's college costs are tax-free for

federal income tax purposes. A gift to a 529 Plan qualifies as an annual exclusion gift to the plan's beneficiary. Special rules allow you to "front-load" a 529 Plan by making up to five years' worth of annual exclusion gifts in one year. So, in 2016, you could transfer \$70,000 - \$140,000 for a married couple - to a 529 Plan without generating gift tax or using up any of your gift tax exemption. While this means you cannot make additional annual exclusion gifts to the beneficiary for the next four years, the tax-deferred compounding effect of the larger sum could provide a sizable financial benefit.

- Consider making large lifetime gifts tax-free using your lifetime gift tax exemption. You may want to consider using part or all of your gift tax exemption by making a gift to your family members or others, thereby removing the value of the gifted asset, plus future appreciation, from your estate. Preferably, high basis assets should be gifted. While the possibility of a estate and gift tax repeal exists, there will be no tax cost by using your lifetime exemption (currently \$5,450,000 and increasing to \$5,490,000 in 2017), and if there is a repeal, you will have simply made additional tax-free gifts.
- Review your entire estate plan. While there may be nothing to do now in response to the anticipated tax law changes, it is still a good time to review your existing estate plan to make sure it still expresses your wishes, discuss with your family and your professional advisors (including your tax accountant, financial planner, investment advisors, insurance professionals, and us) whether any non-tax related changes are desired or advisable, and then establish an action plan, which might include taking some action now and deferring some action until the tax laws have changed. Questions for you to consider include:
 1. Have you nominated the right people or organizations to serve as trustee, executor, guardian, conservator, attorney-in fact and/or health care agent?
 2. Did you accidentally omit a beneficiary who should be included, or include someone as a beneficiary who should not be included?
 3. Have you reviewed all of your beneficiary designations, including life insurance, IRAs, 401(k) plans, other employer-sponsored plans, to make sure they are not out of date and that they are consistent with your wishes and your other estate planning documents?
 4. Are your assets properly titled (e.g., assets intended to be held in a living trust have been formally transferred by deed, change on account name, etc.)?
 5. Are your estate planning documents in a safe location and easily accessible to the people named to handle your affairs (e.g., executor, trustee, attorney-in-fact or health care agent)? Have you communicated the location of these documents to these people?
 6. Do you have in force adequate life insurance, disability insurance, liability insurance and, perhaps, long-term care insurance?
 7. Are there changes within your family (such as births, deaths, aging, health problems, marriages, divorces or a family member's ability to handle financial matters responsibly)?
 8. Have there been changes in your financial situation, including increases or decreases in your income, net worth, liquidity, indebtedness, and major investments?
 9. Are you contemplating retirement (or have you retired)?

10. Have you started a new business or sold an existing business?

- Consider organizing a family financial meeting. While there are varied opinions about how much, or how little, younger generation family members should know about their family's financial situation and the plans that have been made for the inter-generational transfer of the family's wealth, we believe that more disclosure is better and can help avoid unnecessary surprises and prevent nasty legal battles following a parent's death. Family meetings—whether with your advisors present or informally around the dinner table at home—can help you and your family maintain clear communications with respect to financial, inheritance and other matters, and can be a valuable learning opportunity for children and other descendants to understand the benefits and burdens of wealth. Whether at the end of the year or at some other more opportune time, consider arranging a family meeting to discuss investments, inheritance, philanthropy, and more.

Of course, when making any estate planning decisions, especially those that are irrevocable when implemented and that cannot be modified, careful consideration of many non-financial and non-tax issues is necessary. If you want to discuss with us any of the issues described above, or anything else that you may want to consider when planning your estate, please send us an email or give us a call.

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