

Planning in Times of Political, Market and Interest Rate Uncertainty

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Trump/Republican Tax Proposals

- **Individual Taxes:**

Reduce number of brackets to three (12%, 25% and 35%) but no indication as to where the brackets start and end. Note the lowest bracket would increase from 10% to 12% and the highest would drop from 39.6% to 35% (but income from pass thru' entities (e.g., partnerships) would be at only 25%. No change on cap gains rate.

Standard deduction would double

State and local tax deductions and some others (uncertain) would be eliminated

Home mortgage deduction and charitable deduction would remain

AMT would be repealed

Unspecified increase in the child care credit

Note there is no proposal to tax carried interests as ordinary income

Repeal of estate and GST taxes. No statement on basis. And budget shows receipts from estate and GST taxes over the next ten years



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Trump/Republican Tax Proposals

“The estate tax repeal is the art of the deal giveback. I’m glad the president had the foresight to put this in his plan — it actually shows his unselfishness. By design, he’ll take the incoming fire from the left and then he’ll cede the repeal and give the other side a victory, too. For the good of the country and the forgotten middle class, the White House will likely negotiate a bump in the minimum estate value taxable from \$5.49 million to \$10 million to \$20 million.”
Trugman, NY Post 10/1/17



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Trump/Republican Tax Proposals

- **Corporate and Business Taxes:**

Corporate rate would drop to 20%

Repeal of corporate AMT

Dividends might be excluded from gross income

Repatriation of untaxed foreign income at reduced rate but depends upon whether the income comes back in liquid or illiquid form

Income from passthru entities (e.g., S corporations, partnership) would be taxed at 25% (but uncertain if it applies to investment companies such as hedge funds)

Expensing of depreciable assets

Limitation on interest deduction

A type of territorial tax might be adopted, such as no tax on dividends paid to a corporation from a foreign subsidiary



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Basis Rule If Estate Tax Repealed?

- **Let's all hope it carryover basis**
- **Why?**



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CARRYOVER BASIS

UNDER THE 1976 TAX REFORM ACT

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What Could Inhibit These Tax Changes?

- What about ACA (Obamacare)? Why repeal of the ACA seemed critical
- Infrastructure expenditures
- “The American Society of Civil Engineers estimates that fixing all the roads, bridges, public transit, railroads, energy systems, schools, public parks, ports, airports, waste systems, levees, dams, drinking water facilities and hazardous waste installations in the 50 states and the District of Columbia would take \$3.6 trillion by 2020. That’s a little over three years from now, not the 10 years Trump is touting.” The Pew Charitable Trusts
- Projected \$3 to 7 trillion addition to deficit but “With Tax Cuts on the Table, Once-Mighty Deficit Hawks Hardly Chirp” *The New York Times*, 9/28/17
- Everything in Washington is for sale...it’s only a question of price
- What is more important? Corporate tax reduction? Increasing the GDP? Individual income tax reduction? Estate tax elimination? A stronger military (new nukes)? Others?
- Perception (read that as problems for politicians) of excessive benefits for top 1% or .01%? How will it affect the President and his family? What would his tax returns tell us?



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Possible 2017 Income Tax Planning If Income Tax Changes Are Postponed Until 2018

- Why would the changes be postponed until 2018?
- Accelerate deductions into 2017 (state income tax [but see Rev Rul 2002-82], property taxes, charitable, etc.)
- Accelerate contributions to IRAs, etc.
- Postpone IRA Roth Conversion or be ready to recharacterize by the time of the filing of the 2017 return
- Consider postponing income (gains, dividends, business income) until 2018
- Accelerate tax credits
- Take losses and gains in 2017 to offset each other
- Consider gifts of appreciated property to others in lower tax brackets before any possible capital gains taxes at time of gift.
- Do ING trusts this year for the same reason



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Potential 2017 Income Tax Planning

- If gift tax is repealed, income tax flexibility is significantly increased
- Conversion of non-business income to business income?
- Basis planning using gifts, partnerships, cash out refinancings and multiple grantor trusts
- Variable life insurance (PPLI) and deferred variable annuities
- State income tax planning by shifting residency of taxpayer
- Transfers to NRAs
- CLATs with reversions: but what of the income tax charitable deduction limitation?



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Wills and Revocable Trusts

- Cannot eliminate tax planning provisions until law is confirmed to have changed
- Should consideration of repeal be added to documents in process?
- What should be done?
- Alternative dispositions (“I leave my estate this way, if there is an estate tax in effect at my death, or that way, if there is none, or this other way if there is a capital gains tax at death....”)
- Danger of tax driven formula clauses
- In all events, make it clear by an expression of intent



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Expression of Intention

- Estate Tax Efficient Shares

I have provided in this Will, if my Wife survives me, for my estate to be divided into what I perceive to be estate tax efficient shares for those who may succeed to property disposed of hereunder upon the death of my Wife. I realize that the size of those shares is dependent upon artificial tax concepts and upon elections or other decisions made by my Executor and legislation that may be in effect when I die. I also realize that on account of changes enacted to the death tax laws the size of the shares also will change depending upon the year of my death. I further acknowledge that the interest of my Wife in the shares may be different. Because benefiting my Wife is one of my primary concerns, I hope and expect, but do not direct, the Trustee (other than any Interested Trustee) of any trust hereunder in which my Wife has an interest to benefit my Wife therefrom in a manner that will eliminate or minimize the impact upon her of the artificial division of the shares. Without limiting the discretion granted to the Trustee hereunder, without granting my Wife any right to compel the Trustee to do so, and without imposing any obligation for the Trustee to do so, and solely by way of illustration and not limitation, I authorize the Trustee (other than any Interested Trustee) to pay principal to my Wife from any trust that qualifies for the Federal and/or state estate tax marital deduction while accumulating income in any other trust in which my Wife may have an interest in a manner that the Trustee (other than any Interested Trustee) believes may provide my Wife with approximately the same net benefit (taking into account income taxes and any other factors the Trustee (other than any Interested Trustee) deems appropriate) my Wife would have received had all income or a reasonable unitrust amount, as determined by the Trustee (other than any Interested Trustee), from all trusts in which she has an interest hereunder been paid to her. **I direct that, to the extent consistent with the foregoing, this instrument be construed to minimize the income, estate and any other taxes that may be imposed on my estate and that of my spouse.**



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Why Planning Cannot be Halted Now

- The estate tax has always been a political issue
- Even if repealed, it may return as has happened three times in our nation's history. So unless the client is certain to die while repeal is in effect, planning is necessary
- GRATs—Long or Short Term? Increasing, Decreasing or Level Annuity Payments?
- 100 Year GRATs and SPLATssm
- Note sale transactions (ISGTs)—when they work
- Annual exclusion gifts
- Use of the remaining lifetime exemption
- Allocation of used GST exemption to existing transfers
- Others? Any Transaction that Poses Little Gift or Income Tax Risk Especially If the Asset (for Basis or Other Reasons) Can be Reclaimed.
 - Trust Set Up to Trigger Section 2038
 - Grantor Trust Buy Back



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Summary and Conclusions

- Chinese Curse: “May You Live in Interesting Times”
- Don’t Stop Planning
- Fiscal limits
- Tax law is always changing and will continue that way
- There will be political compromises—ACA, Medicare, Social Security, Infrastructure
- All may be sunsetted
- Eventually, the Democrats will return to power.
- Federal and state income tax planning
- Best Financial Planning: Exploiting the Most Important Factor: Tax Free Compounding



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