Tax Alert

2016 Tax Planning Guidelines for Individuals & Businesses

TAX PRACTICE BOARD

Stephen Brecher
646.225.5921
Stephen.Brecher@WeiserMazars.com

Jeffrey Katz
212.375.6816
Jeffrey.Katz@WeiserMazars.com

Howard Landsberg
212.375.6604
516.282.7209
Howard.Landsberg@WeiserMazars.com

James Toto
732.205.2014
James.Toto@WeiserMazars.com

Faye Tannenbaum
212.375.6713
Faye.Tannenbaum@WeiserMazars.com

EDITOR

Richard Bloom
732.475.2146
Richard.Bloom@WeiserMazars.com

As 2016 draws to a close and we look to new policies outlined by the President-elect and Republican-controlled Congress, tax planning is as important as ever. Businesses and individuals alike have many opportunities available to reduce their overall tax burden. Although it may seem like a massive undertaking, the path ahead is not as intimidating as it appears.

Since 2013, there have been no substantial increases in tax rates, and only modest adjustments in the tax brackets due to inflation and the cost of living adjustment. However, this does not imply that there has been no change in the overall tax world. Tax year 2015 saw same-sex couples qualify to be treated as married couples and qualify for the same benefits and treatment as in a traditional marriage. Also in 2015, The Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 modified the filing dates for many returns, starting with the January 1, 2016 tax year. The 2016 tax year also has had many statutory and regulatory changes and significant court cases; however, 2016 may eventually be best known in the tax world as being the year in which Donald Trump was elected President and the Republicans maintained control of the House of Representatives and the Senate. Their proposals could significantly modify the current tax system and affect tax planning for years to come.

President-elect Trump has outlined his plan to change the individual and corporate sections of the Internal Revenue Code. Although the main thrust of the proposal is to simplify the tax code, it would also bring about sizable changes to tax rates and the overall tax landscape. Some of the proposals can be found below.

President-elect Trump's proposals affecting individuals:

- Reduce the number of tax brackets from seven to three. The highest tax bracket would be 33%, and would begin at $225,000 for Married Filing Joint filers and $112,500 for a Single filer.
- Eliminate the Net Investment Income Tax and the Alternative Minimum Tax.
- Increase the standard deduction to $15,000 for Single filers and $30,000 for Married Filing Joint filers.
- Tax pass-through income at a flat 15% rate, to the extent that the income is retained within the business.
- Eliminate the personal exemption and the Head of Household filing status.
- Tax carried interest at ordinary income tax rates.
- Cap itemized deductions at $100,000 for Single filers and $200,000 for Married Filing Joint filers.
- Allow for childcare costs to be deductible against Adjusted Gross Income, based on the average cost of care in the resident state. These costs will be eliminated for income greater than $500,000 for Married Filing Joint filers and $225,000 for Single filers.
- Eliminate the "death" tax, and include some form of capital gains tax at death, or when a decedent's assets are sold.

President-elect Trump's proposals affecting businesses:

- Reduce the corporate tax rate to 15% from 35%.
- Increase the Section 179 expense maximum from $500,000 to $1,000,000.
- Tax deemed repatriation of currently deferred foreign profits at a rate of 10%.
- Increase the cap for the tax credit for employer-provided day care under Section 205 of the EGTRA from 2011 from $150,000 to $500,000, and reduce its recapture from ten years to five.
- Eliminate the corporate Alternative Minimum Tax Rate.
- Allow firms engaged in manufacturing in the United States to choose between expensing capital investment and deducting interest paid.

All taxpayers should be aware of the changes to the due dates of various tax returns. These changes result from the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015, and affect the following tax returns with tax years beginning after December 31, 2015.

- Partnership (Form 1065) returns that were due on April 15 are now due March 15. The extended due date remains September 15. Fiscal year partnership returns are now due 2-½ months after the year-end, as opposed to 3-½ months. C Corporation (Form 1120) returns that were due on March 15 will now be due on April 15. The extended due date remains September 15, until 2025. After 2025, an extended C Corporation return will be due October 15. Fiscal year C Corporation returns are now due 3-½ months following the close of the tax year, as opposed to 2-½ months.
- Trust (Form 1041) returns remain due on April 15. Trust returns that are extended will now be due on September 30, rather than September 15. Employee Benefit Plans (Form 5500) remain due on July 31; however, the extended due date will now be November 15.
- Tax Exempt Organizations (Form 990 including Form 990-PF) have been granted six-month extensions, rather than filing two three-month extensions.
- Finally, and this is one of the most important aspects of these changes, the date is changed for FINCEN Form 114. Originally due June 30, this form will now be due on April 15 for tax years beginning after December 31, 2015. Please note that this form can now be extended, and the extended due date will be October 15.

We at WeiserMazars continue to learn from history while helping to shape the present and plan for the future, and have put together the following guide to address several key issues that will assist you in your personal, business, and estate tax planning. Any tax professional at WeiserMazars is ready to meet with you to discuss your specific situation.

Individual & Fiduciary Income Tax Rates

The 2016 federal individual and fiduciary income tax rates and brackets are:

Rate	Single	Married Filing Jointly	Head of Household	Married Filing Separately	Trust and Estates
10%	$0 to $9,275	$0 to $18,550	$0 to $13,250	$0 to $9,275	N/A
15%	$9,276 to $37,650	$18,551 to $75,300	$13,251 to $50,400	$9,276 to $37,650	$0 to $2,550
25%	$37,651 to $91,150	$75,301 to $151,900	$50,401 to $130,150	$37,651 to $75,950	$2,551 to $5,950
28%	$91,151 to $190,150	$151,901 to $231,450	$130,151 to $210,800	$75,951 to $115,725	$5,951 to $9,050
33%	$190,151 to $413,350	$231,451 to $413,350	$210,801 to $413,350	$115,726 to $206,675	$9,051 to $12,400
35%	$413,351 to $415,050	$413,351 to $466,950	$413,351 to $441,000	$206,676 to $233,475	N/A
39.6%	Over $415,050	Over $466,950	Over $441,000	Over $233,475	Over $12,400

The 2017 federal individual and fiduciary income tax rates and brackets are:

Rate	Single	Married Filing Jointly	Head of Household	Married Filing Separately	Trust and Estates
10%	$0 to $9,325	$0 to $18,650	$0 to $13,350	$0 to $9,325	N/A
15%	$9,326 to $37,950	$18,651 to $75,900	$13,351 to $50,800	$9,326 to $37,950	$0 to $2,550
25%	$37,951 to $91,900	$75,901 to $153,100	$50,801 to $131,200	$37,951 to $76,550	$2,551 to $6,000
28%	$91,901 to $191,650	$153,101 to $233,350	$131,201 to $212,500	$76,551 to $116,675	$6,001 to $9,150
33%	$191,651 to $416,700	$233,351 to $416,700	$212,501 to $416,700	$116,676 to $208,350	$9,151 to $12,500
35%	$416,701 to 418,400	$416,701 to $470,700	$416,701 to $444,500	$208,351 to $235,350	N/A
39.6%	Over $418,400	Over $470,700	Over $444,500	Over $235,350	Over $12,500

Taking into account the phase-out of itemized deductions and the net investment income tax, the top marginal individual tax bracket could be as high as 44.6%.

Capital Gains Tax Rates

The long-term capital gains tax rate is 20% (23.8% if the net investment income tax discussed below applies), if taxable income exceeds $466,950 for a married couple filing jointly; $233,475 for a married couple filing separately; $441,000 for heads of household; and $415,050 for single taxpayers. For taxpayers with taxable income below these thresholds, the capital gains tax rate remains 15% (18.8% including the net investment income tax). Lower rates may apply to individuals at certain income levels. We discuss potential capital gains planning ideas later in this article.

Net Investment Income Tax

Taxpayers with qualifying income are liable for the 3.8% net investment income (NII) tax on certain items of unearned income. The tax is levied on the lesser of NII or the amount by which modified AGI exceeds certain threshold amounts. The threshold amounts for the NII tax are:

1. $250,000 for a surviving spouse or married filing jointly (MFJ) taxpayers;
2. $125,000 for married filing separately (MFS) taxpayers; and
3. $200,000 for single or head of household taxpayers.

Investment income for NII purposes is (1) gross income from interest, dividends, annuities, royalties, and rents (other than from a trade or business); (2) other gross income from a passive activity or a trade or business of trading in financial instruments; and (3) net gain attributable to the disposition of property other than property attributable to an active trade or business. Some items not included in net investment income include: distributions from certain qualified retirement plans and individual retirement accounts; amounts subject to self-employment tax; and municipal bond interest. The net investment income tax is slated to be eliminated in President-elect Trump's proposals. Taxpayers may want to defer selling investments and other business property until changes to the tax code are enacted.

Additional Medicare Surtax

In addition to the NII tax, the Patient Protection and Affordable Care Act ("PPACA") instituted an additional .9% Medicare tax effective for the 2013 tax year. The tax is imposed on wages and self-employment income in excess of $250,000 for married filing jointly taxpayers ($200,000 for single taxpayers, and $125,000 for married filing separately).

As one plans for 2016, it is important to keep 2017 in mind. We have included charts below that compare some of the more common tax rates, exemption amounts, and retirement plan contribution limits in 2016 to those that would apply in 2017. The chart highlights that most of these remain the same in 2017, with the exception of the Social Security wage base, gift, estate, and generation-skipping transfer tax exemption. Most of the retirement plan contribution limits will remain static for 2016 and 2017.

	2016	**2017**
Maximum income tax rate	39.6%	39.6%
Maximum capital gains rate	20%	20%
Maximum qualified dividends rate	20%	20%
Medicare surtax on NII	3.8%	3.8%
Maximum Medicare payroll tax rate/wage base	2.35%[s]/no limit	2.35%*/no limit
Maximum Old-Age, Survivors, and Disability	6.2%/$118,500	6.2%/$127,200
(Social Security) — rate/wage base		
Estate tax exemption	$5,450,000	$5,490,000
Maximum estate tax rate	40%	40%
Gift tax exemption	$5,450,000	$5,490,000
Maximum gift tax rate	40%	40%
GST tax exemption	$5,450,000	$5,490,000
Maximum GST rate	40%	40%
Annual gift tax exclusion	$14,000 per donee	$14,000 per donee
Annual exclusion gift to non-citizen spouse	$148,000	$149,000

*This comprises the basic Medicare rate of 1.45%, plus the additional Medicare tax of 0.9% discussed above. The maximum employee portion of Medicare is 2.35%, whereas the maximum employer portion is 1.45%. Employers are responsible for withholding the 0.9% additional Medicare Tax on an individual's wages paid in excess of $200,000 in a calendar year, without regard to filing status.

401(k)s, 403(b)s, most 457 plans, and the federal government's Thrift Savings Plan	**2016**	**2017**
Annual contribution limit	$18,000	$18,000
Catch-up contribution if age 50 or older	$6,000	$6,000

SIMPLE 401(k)s and SIMPLE IRAs (often used by smaller companies)	**2016**	**2017**
Annual contribution limit Catch-up contribution if age 50 or older	$12,500 $3,000	$12,500 $3,000

SEP IRAs and Solo 401(k)s (often used by the self-employed or small business owners	**2016**	**2017**
Annual Contribution Limit	$53,000	$54,000
IRAs (Traditional or Roth)	**2016**	**2017**
Annual contribution limit	$5,500	$5,500
Catch-up contribution if age 50 or older	$1,000	$1,000

Careful consideration of the income and charitable contribution planning ideas outlined below can help minimize the tax bite.

Individual Income Tax Planning

1. *Capital gains and losses*
    a. *Netting of capital gains and losses*: Taxpayers are allowed to deduct up to $3,000 of net capital losses against ordinary income. Excess capital losses are carried over to future tax years. Review your capital loss carryovers to determine if any appreciated positions could be sold without incurring additional income tax.
    b. *Harvest tax losses*: If you have overall net capital gains, consider selling loss positions. Securities sold at a loss could be repurchased subject to the wash sale rule. This rule prohibits you from recognizing losses if you purchase substantially identical securities within 30 days before or after the sale. Consider purchasing Exchange Traded Funds tied to the original securities industry or sector to avoid waiting the 30 days.
    c. *Qualified small business stock*: Taxpayers who acquire stock that is qualified small business stock, and hold the stock for five years, may exclude up to 100% of the gain from income upon the sale of the stock. The exclusion is generally 50%, but was increased to 75% for QSBS acquired after February 17, 2009, and before September 28, 2010, and to 100% for QSBS acquired after September 27, 2010. QSBS gain is generally treated as a preference item for AMT purposes, except QSBS gain that qualifies for the 100% exclusion, which is not treated as an AMT preference item.

2. *Alternative minimum tax (AMT):* AMT is a parallel tax system that was originally intended to cause wealthy taxpayers to pay their fair share of tax. Over the years, more and more individuals (many of whom would not consider themselves wealthy) have become subject to this tax. The AMT system disallows or limits many common income tax deductions including the deduction for state and local income taxes, real estate taxes, interest on home equity loans not used to build or improve your residence, and miscellaneous itemized deductions, such as investment advisory fees. AMT brackets and exemptions are indexed annually for inflation. When timing income and deductions, taxpayers must carefully analyze their AMT situation.
    a. If you project that you will be subject to AMT in 2016, you should consider deferring certain deductions, such as state income tax payments and real estate taxes, until 2017 if you do not expect to be subject to AMT in 2017.

b. If you project that you will be subject to AMT in 2016, you should consider accelerating ordinary income into 2016. You will pay your tax sooner, but the income may be taxed at 28% (the highest AMT rate) as opposed to 39.6% (the highest ordinary income tax rate).
c. If you are not projected to be subject to AMT in 2016, you should consider paying your fourth-quarter state estimated tax payment prior to December 31, 2016, rather than waiting until its actual due date of January 15, 2017.
d. If you are not projected to be subject to AMT in 2016, also consider exercising Incentive Stock Options (ISOs).

3. *Retirement Planning*

In terms of retirement planning, there has been very little change from the prior year. However, a new ruling has been issued in relation to distributions. Revenue Procedure 2016-47, effective August 24, 2016, relates to distributions from retirement plans or IRAs. These types of distributions are normally taxable, unless the distribution is rolled over into another retirement plan or IRA. This rollover must occur with 60 days of receiving the distribution. In the past, a taxpayer who did not make the qualified rollover within the 60 days would be subject to the complicated and onerous procedure of requesting a private letter ruling from the IRS. This process was both very expensive and time consuming, as the taxpayer was at the mercy of the IRS. Revenue Procedure 2016-47 helps to relieve those burdens. If the 60-day period is exceeded, the taxpayer can follow a self-certification procedure, whereby the plan administrator, or IRA trustee or custodian, may rely on the certification, and qualify the rollover as being done within the 60-day window, thus making the distribution nontaxable.

a. *SEP-IRAs*: Self-employed individuals can take advantage of contributions to retirement plans to improve their tax standing. An individual with a SEP-IRA may be eligible to make a contribution of up to the lower of $53,000 ($54,000 in 2017), or 20% of net self-employment income. This can offset the ordinary income earned during the year, which will eventually lower the overall tax bite. Self-employed individuals also can establish other types of plans, such as a Keogh Plan and defined benefit plans.
b. *ROTH IRA Conversion*: A Roth IRA allows tax-free growth of assets, tax-free distributions, and does not require minimum distributions each year upon reaching age 70-1/2. Consider converting a traditional IRA to a Roth IRA. Converting to a Roth IRA results in the converted amount of the traditional IRA being taxed as ordinary income in the conversion year. The converted amount is also considered part of your modified adjusted gross income when determining if you are subject to the net investment income tax.
c. *ROTH IRA Re-Characterization*: If you convert to a Roth IRA in 2016, you can re-characterize it back to a traditional IRA until October 16, 2017. This gives you time to monitor market conditions, and make a decision to undo the Roth conversion if the account value decreases significantly from the time of conversion, thereby avoiding the recognition of income tax based on the higher value of the account on the date the conversion was made. This flexibility can be enhanced further by segregating the Roth IRA into separate accounts invested in diversified portfolios of varying asset classes.
d. *Establishment of Retirement Plan*: Qualified retirement plans need to be established by December 31, 2016, although they can be funded in 2017. IRAs can be established and funded by April 15, 2017.
e. *Required minimum distributions*: A taxpayer must take their required minimum distribution by April 1st of the year after they turn age 70 ½. The taxpayer could take the first distribution in the year they turn age 70 ½ in order to avoid having to take two distributions in the same year. If one believes that the lower tax rates proposed by President elect-Trump and the GOP will become law, they may want to defer their first distribution until next year.

4. *Passive Activities:* Taxpayers may take deductions for business and rental activities that they do not materially participate in, but nonetheless derive income from (i.e., passive activities). The passive activity rules stipulate that

a taxpayer is allowed to deduct losses stemming from passive activities to the extent of one's passive income or if it is the final year of the investment. When passive losses exceed passive income, unused passive losses are carried forward to offset future passive income.

a. Review your passive activities to determine if some can be grouped together. You may meet the material participation test for a group of activities even though you may not meet the material participation test for each individual activity. Certain tax elections must be made in order to group activities.
b. Consider the real estate professional rules if you spend a significant amount of time in real estate related activities. A real estate professional is not subject to the passive activity rules.
c. Converting a passive activity to a non-passive activity, i.e., one in which you materially participate, would reduce your net investment income tax.
d. Rental Income Exclusion. If you rent out all, or a portion, of your principal residence or second home for less than 15 days, you don't have to report the income. But expenses directly associated with the rental won't be deductible.

5. *Miscellaneous Items:*

a. You can elect to amortize certain bond premiums, thus creating a current year tax deduction. If amortizing is elected, the premium is considered a basis adjustment that is factored into the gain or loss calculation on disposition.
b. Consider accelerating or deferring income, such as salaries or bonuses, to take advantage of income tax brackets.
c. Medical expenses are deductible only if they exceed 10% of your AGI. The threshold is 7.5% of AGI for any tax year beginning before January 1, 2017 for taxpayers who have attained age 65 before the close of such year. Consider bunching medical expenses into one year in order to reach these floors.
d. Careful consideration of deferring income and accelerating deductions should occur if one believes that income tax rates will decline as President-elect Trump and the GOP have proposed.
e. You should review your income tax withholdings and estimated tax payments already made to determine if you already have paid enough to avoid the underpayment of estimated tax penalty. If not, request that your employer take out additional withholdings and/or make a fourth-quarter estimated tax payment. Income tax withholdings are considered withheld pro rata throughout the year, so if there is a shortfall during one of the previous quarters, additional withholdings at this time can help avoid or minimize the underpayment of estimated tax penalty. When determining your estimated tax liability for 2016, remember to include the additional .9% Medicare tax as well as the 3.8% net investment income tax.

Charitable Planning:

Charitable contributions can provide personal satisfaction along with potentially large income tax deductions. Charitable contribution planning is also completely discretionary and can be timed to best meet your needs.

1. Charitable contributions: Contributions of cash to public charities can be deducted up to 50% of your AGI, and contributions of appreciated property held for over one year can generally be deducted up to 30% of AGI. Contributions of qualified appreciated stock to a private foundation are subject to a limitation of 20% of AGI.
    a. When contributing appreciated securities, consider purchasing the identical positions by using the cash you would have used for the donation, thereby creating a basis step-up in the positions.
    b. The built-in gain on appreciated securities held for more than one year does not have to be recognized for tax purposes when the securities are contributed to a charity. Consequently, the capital gains and net investment income taxes that would have been realized if the securities were sold are avoided.

c. Be sure to obtain proper documentation for any gifts in excess of $250.
d. Pay special attention to the timing of your giving. Checks need to be mailed before year-end, and stock is deemed to have been received when recorded by the recipient charity. Credit card contributions can be deducted on the date the charge is made on the card.

2. Individuals over age 70-1/2 are permitted to make charitable gifts from an individual retirement account including required minimum distributions ("RMD"), of up to $100,000 and not report the IRA distributions as taxable income.

3. *Donor Advised Funds (DAF):* DAFs have become more popular recently. With a DAF, you contribute assets to a sponsoring organization, such as a mutual fund group or investment firm. Although you relinquish control of the assets, you can still direct the investments and advise the sponsoring organization with respect to what charities receive the assets in the DAF. Whereas donors do not have the legal right to insist that their donated funds be used in a particular manner, most sponsoring organizations oblige the donor's wishes. Donors may take a tax deduction in the year the contribution is made, but the DAF may release the funds over time.

4. *Charitable Remainder Trusts:* The charitable remainder trust (CRT) is a popular vehicle for deferred giving, one that offers various structures to match the needs of donors. The transfer is accomplished by creating a trust that pays income to individuals during the trust's existence. After the income term expires, the property remaining in the trust goes to charity. In the year the CRT is funded, the donor is entitled to a charitable deduction equal to the present value of the remainder interest given to the charity.

5. *Charitable Lead Trusts*: The charitable lead trust (CLT) is another popular vehicle for charitable giving, especially in today's low interest rate environment. It is similar to a CRT, except that the charity receives the income interest and your beneficiaries receive the remainder interest. Depending on how the CLT is structured, you may be entitled to a deduction in the year of the CLT's creation equal to the present value of the income stream.

6. *Limitations on deductibility:* As mentioned above, President-elect Trump has proposed capping itemized deductions at $200,000 for married filing joint taxpayers ($100,000 for single taxpayers). If this proposal is enacted into law, the deductibility of one's charitable contributions could be limited. Consequently, if you have outstanding pledges or are considering making sizable charitable contributions, you should consider accelerating the payment into the 2016 tax year.

Business Planning:
Due to the passage of the PATH Act in late 2015 (which permanently extended many tax incentives that were previously temporary and were renewed annually), business tax planning for the 2016 year-end can be done with somewhat more clarity than in past years, given the certainty of various deductions and credits. However, taxpayers will need to consider the potential tax law changes which could occur as the tax policy of the new administration is implemented.

Businesses seeking to maximize tax benefits through 2016 year-end tax planning may want to consider two general strategies: (1) use of traditional timing techniques for income and deductions, such as income deferral and deduction acceleration (or potential income deferral and deduction acceleration, if corporations are planning for the expected reduction in tax rates discussed above), and (2) special consideration of significant tax incentives (including those which may increase or be eliminated next year). These include the IRS Section 179 deduction (with a limit of $500,000 that may be increased to $1,000,000 in future years), research tax credits, and bonus depreciation.

Businesses may want to consider the following key items in order to effectively engage in tax planning for year-end:

1. Costs related to tangible property may provide significant tax planning opportunities. Acquisitions of certain items of property under $5,000 can be deducted under a de minimis safe-harbor provision, if the taxpayer issues audited financial statements. In the event that audited financial statements are not issued, the limit is decreased to $2,500. Taxpayers must have a written policy in place to qualify.

2. The IRS has provided qualified retail and restaurant businesses with a safe-harbor method for determining whether expenses paid or incurred to remodel or refresh a qualified building are deductible, capitalized as improvements, or capitalized as the costs of property produced by the taxpayer for use in its trade or business. If the safe harbor applies, 25 percent of qualifying remodel-refresh costs is capitalized, and the remaining costs are currently deductible. The safe harbor method may not be used unless the taxpayer places the building in a MACRS general asset account.

3. For tax year 2016, bonus depreciation can be deducted for up to 50 percent of the cost of the asset (this election will remain at the 50 percent level for 2017 under current law and decrease thereafter through 2019). Although a final decision on making the bonus depreciation deduction is not required until a return is filed, taxpayers should consider the impact of such an election on their taxable income for 2016, especially in planning asset acquisitions prior to year end. Taxpayers may consider electing to spread depreciation deductions more evenly over future periods, and/or remain consistent with the state depreciation deduction for those states which have decoupled from bonus depreciation (many states such as New York, New Jersey and Pennsylvania have decoupled).

4. The amount permitted to be expensed under Internal Revenue Code Section 179 for new and used eligible business property purchased during 2016 is $500,000, with an investment limit of $2,010,000 before phase-out. This amount will definitely increase for inflation in 2017, and may potentially double. Taxpayers should take advantage of this annual deduction.

5. The research and development credit may be claimed for increases in business-related qualified research expenditures, and for increases in payments to universities and other qualified organizations for basic research.

6. New rules under Section 385 would treat certain related-party debt as stock, rather than debt, for federal tax purposes, if extensive documentation requirements with respect to such debt instruments are not met.

7. The five-year period for recognizing built-in gains tax for S corporations is now permanent, so taxpayers who wish to plan around conversion to or from an S corporation can now do so with more certainty.

8. Domestic manufacturing and certain other production activities may qualify for a tax deduction under IRC Section 199, which allows taxpayers to deduct 9% of the lesser of qualified production activity income or taxable income for the year, limited to 50% of qualifying wages. Historically, this has been underutilized. Taxpayers should look to take advantage of the deduction as it applies to their particular tax situation. This deduction may be eliminated once the tax policy of the new administration is implemented.

9. Under the Affordable Care Act, Employers with 50 or more full-time employees are required to file Forms 1094-C and 1095-C, Employer-Provided Health Insurance Offer and Coverage, with both the employee and the IRS. This Form includes information about whether the employer offered qualifying health coverage to the employee, spouse, and dependents for some or all months during the year. The penalties for non-filing are $100-$250 per form.

10. Effective for tax years beginning after December 31, 2017, adjustments made in an IRS examination of a partnership are assessed against the partnership itself in the year of examination. This shifts the burden of examination adjustments from the partners during the tax year under examination to the partners in the year the examination ends. Planning can be done to implement these provisions early and/or adjust partnership agreements to mitigate the impact of complying with these rules.

11. Cash basis taxpayers should analyze whether they can prepay expenses and accelerate deductions. Accrual basis taxpayers should review their accounts receivable for possible bad debt deductions and dispose of unsalable inventory.

12. Due dates for extensions and final payments of tax will change for 2016 (April 15th for corporations and March 15th for partnerships), and planning should be done to ensure compliance with these due dates.

13. NOL and credit utilization should be considered in determining whether to accelerate income and/or deduction recognition. If such attributes are expiring, acceleration of income may be an appropriate course of action, despite the anticipation of reduced corporate income tax rates.

14. Cross-border transactions and the application of the transfer pricing rules to such transactions should be considered, especially in light of the additional scrutiny such transactions are subject to due to the impact of BEPS.

Estate and Gift Tax Planning:

Just when the transfer tax system was starting to regain a semblance of stability, the election of Donald Trump as President may cause significant changes to the system. President-elect Trump's tax plan includes elimination of the "death" tax, and with a Republican majority in both houses of Congress, it is not unreasonable to expect major changes, if not outright repeal.

However, under President-elect Trump's tax plan, the "death" tax repeal is to be replaced with a capital gains tax (currently 20%) on capital gains held until death and valued over $10 million. There are not many details to this plan, so it is not only unclear how it would work, but whether the repeal would also apply to the gift tax and the generation skipping transfer tax. In addition, it is yet to be determined whether any changes happen immediately, or are phased in over time. Given the uncertainty, any planning done now should remain flexible to account for various future potential scenarios.

In addition to the potential repeal of the estate tax, another event that took place in 2016 which could significantly impact the estate tax world was the issuance of proposed regulations under section 2704.

On August 2, 2016 the Internal Revenue Service issued proposed regulations to reduce the ability to apply valuation discounts to intra-family transfers of interests in entities. The discounts normally associated with these transfers are those for lack of control and lack of marketability. Specifically, these regulations may restrict, or eliminate, the ability to claim a lack of control discount. These proposed regulations are far reaching and have created a firestorm of criticism, not only from the estate planning community, but from Congress as well. The Treasury Department was surprised about the uproar.

Catherine Hughes, an attorney advisor with the Treasury Department's office of Tax Policy Counsel to the Treasury, spoke at the Forty Second Annual Notre Dame Tax and Estate Planning Institute, and indicated that the goal of the proposed regulations was not to restrict typical valuation discounts available to transfers of minority interests in closely-held entities; rather, the intent was to disregard restrictions placed on transfers that did not, in Treasury's opinion, change the value of the transferred interests.

A public hearing on the proposed regulations took place on December 1, 2016. Ms. Hughes stated during the hearings that two of the rules described in the proposed regulations that caused consternation among practitioners will be made clearer, and will not be as onerous as previously thought. Other changes may occur as well. Regardless, they will not become effective until finalized, with certain provisions not taking effect until 30 days after finalization. If you have been contemplating making this type of gift, it would be prudent to implement prior to the effective date of the regulations. However, if the estate tax is repealed, these proposed regulations may never take effect.

As it currently stands, the estate, gift, and generation skipping transfer tax rates are set at 40%. The applicable exemptions are now fixed, although annually indexed for inflation. While some may wish to wait and see what 2017 and future years bring, doing some additional year-end planning might be wise, especially with the more common planning techniques. Consider the following options as we close out the year.

1. *Maximize annual exclusion gifts:* Each person may make total annual gifts that are free of gift tax of up to $14,000 ($28,000 for a married couple) to an unlimited number of donees. To qualify for the "annual exclusion," the gift must be a present interest — meaning that the donee must have immediate right and access to the gifted property. An annual exclusion gift also does not reduce one's lifetime exemption.
    a. Special attention should be paid if annual exclusion gifts are made to life insurance trusts in order to pay for premiums. Such gifts should be documented, and trustees should ensure that the trust beneficiaries receive notice of withdrawal rights, also known as Crummey letters.

2. *Utilization of lifetime exemption:* Each person can gift a total amount up to their lifetime exemption ($5,450,000 in 2016 and $5,490,000 in 2017) without incurring gift tax. You may want to use a portion or all of your gift tax exemption to make substantial lifetime gifts. Gifts that use the gift tax exemption can remove the value of the gifted asset, plus any future appreciation, from your taxable estate.

3. *Front loading Section 529 plans:* A section 529 plan is a plan established to put aside funds for college. A transfer to a section 529 plan is considered a gift, and qualifies for the annual exclusion discussed above. Five years' worth of gifts can be made at one time, thereby allowing a married couple to gift up to $140,000 to a 529 plan without generating any tax or using any exemption amounts. If this is done, the gift is treated as having been made over five years. For instance, if you gave $70,000 to a section 529 plan before the end of 2016, you would be deemed to have given a $14,000 annual exclusion gift this year and for the next four years.

4. *Grantor retained annuity trusts (GRATs):* GRATs can be used to transfer future appreciation of an asset to beneficiaries. These trusts generally work best with assets that are likely to appreciate quickly and during a time (such as now) when interest rates are low.

5. *Portability:* Portability allows the surviving spouse to use the deceased spouse's unused lifetime gift and estate tax exemption ("DSUE") amount during the surviving spouse's lifetime, or have the amount applied upon death. Therefore, if one spouse dies with an estate tax exemption amount remaining, the surviving spouse's remaining exemption will be increased by the deceased spouse's unused amount. Portability gives individuals another opportunity to maximize the use of both spouses' exemption amounts, especially if a lifetime plan has not been put in place or fully implemented. Portability does not apply to the GST tax exemption. Portability must be elected.

6. *QTIP election:* The portability election, when used together with certain electing trusts qualifying for the estate tax marital deduction (the qualified terminable interest property trust aka "QTIP Trust), allowed an estate to provide for the most beneficial use of the DSUE, providing for post-mortem estate tax planning. However, in prior issued guidance, there was a procedure by which the IRS would disregard a QTIP election if the election was not necessary to reduce the estate tax to zero. It was not clear to practitioners whether a QTIP election made on a tax return filed to elect portability was valid or may be disregarded. New guidance issued by the IRS in 2016 indicates that a QTIP election will not be disregarded when an estate has elected portability, regardless of whether the election was necessary to reduce the estate tax to zero. This new guidance allows for the maximization of the DSUE.

7. Other estate planning tools exist and can be discussed with your advisors, such as the use of Sales to Intentionally Defective Grantor Trusts, Qualified Personal Residence Trusts, and the use of Family Limited Partnerships.

When addressing estate planning, one must also consider state estate and inheritance taxes as well as state gift taxes. Nine states are ushering in changes to their transfer tax system in 2017. In New Jersey, Governor Christie signed into law a bill that included the repeal of the New Jersey estate tax in 2018. Estates of decedents dying on or after January 1, 2018 will no longer be subject to estate tax in New Jersey. In addition to the complete repeal in 2018, the law increased the exemption amount for decedents dying in 2017. The exemption amount for decedents dying in 2017 is now $2 million, an increase from the current exemption amount of $675,000. The inheritance tax will remain in place so bequests to non-lineal beneficiaries will still be subject to a tax.

Most of the other states' changes to their estate taxes were statutory changes to their exemption amounts or inflation-adjusted changes to their exemption amounts. For instance, New York's exemption will be increased to $5.25 million effective April 1, 2017. Maryland and Minnesota also increased their exemptions to $3 million and $1.7 million, respectively, effective January 1, 2017. The balance of the state changes related to inflation adjustments to the exemption amount (Delaware, Hawaii, Maine, Rhode Island, and Washington).

Careful and well executed tax planning requires special attention across a wide range of areas. Your planning should be analyzed in light of the current legislative environment and keeping your individual goals in mind.

To refine your approach, learn more about any of the strategies mentioned, or to discuss your individual circumstances, please contact your WeiserMazars tax professional for more information.

Richard Bloom, CPA, PFS, MST
Partner
732.475.2146
Richard.Bloom@WeiserMazars.com

Faye Tannenbaum, CPA, MBA, MST
Partner
212.375.6713
Faye.Tannenbaum@WeiserMazars.com

Christopher Lieto, CPA
Senior Manager
732.475.2121
Christopher.Lieto@WeiserMazars.com

David Kohn, JD, LLM
Senior Manager
732.475.2127
David.Kohn@WeiserMazars.com

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