

2016 Reminders and Planning Ideas for 2017

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PRACTICES Tax, Private Clients and Estate Planning, Family Wealth and Estate Planning, Trust and Estate Administration, Family Office, Tax-Exempt Organizations and Private Foundations

2016 Follow-Up

Payments on Promissory Notes and Guarantees. If you sold property (for example, real estate, stock, or an interest in a family limited partnership or other closely-held entity) to a family member or a trust for a promissory note in the past, the purchaser should make the proper interest payments. Also, if the transaction involved a guarantee of any part of debt, the guarantor should receive the proper guarantee fees.

Gift Tax Returns. If you made any gifts during 2016, you may be required to file a gift tax return reporting all your gifts, and apply a portion of your lifetime gift tax exemption (\$5,450,000 for 2016). If you made gifts to grandchildren or to trusts that may benefit grandchildren, your gift tax return may also need to apply a portion of your lifetime generation-skipping transfer (“GST”) tax exemption to such gifts. The gift tax return is due April 15, 2017, unless extended.

Reporting a Sale. If you sold any property in 2016 to a family member or a trust, all such transactions should be reported and fully described on your gift tax return, even if the sale was for full fair market value and you do not believe a gift was involved. By fully reporting a sale transaction, you ensure the statute of limitations begins to run on the IRS’s ability to challenge the valuation.

Last year, the IRS issued proposed regulations under Internal Revenue Code Section 2704, which purport to alter the standards to be applied in valuing intra-family transfers of interests in closely-held business entities for purposes of the estate tax, gift tax, and GST tax. Although we do not anticipate the proposed regulations will be finalized in their current state, as long as the proposed regulations are still pending and have not been revoked by the IRS, a gift tax return that includes an appraisal valuing an interest in a closely-held business should disclose that you may have taken a position contrary to the proposed regulations.

Trump Administration; Planning Considerations For 2017

Tax Reform. It is hard to predict what, if any, tax proposals will pass in 2017. We anticipate the Republicans will attempt to reduce business taxes initially through the budget reconciliation process. The House Republicans’ tax reform plan, released last year, calls for a reduction of the corporate tax rate from 35 percent to 20 percent; President Trump also released a plan last year which would reduce the corporate rate from 35 percent to 15 percent.

Two coordinated bills were recently filed in the Senate and House which call for the elimination of the estate tax and the GST tax; although President Trump has not taken a position on the issue since he took office, this would be in line with a plan he proposed last year. Neither proposal calls for the elimination of the gift tax. It is too early to tell whether any of these bills will gain enough momentum for a vote. You might consider delaying a transaction that would trigger payment of substantial gift taxes.

What Kind of Planning Makes Sense For 2017?

1. Options to consider include making gifts or sales of appreciating assets to a trust for the benefit of descendants. Trusts can also protect the gifted property from beneficiaries' creditors and divorces.
2. Assets that are difficult to value often make the best gifts because the gift tax value is normally less than the amount that would be received if the property were liquidated. Hard to value assets include minority interests in a family business and fractional interests in real estate.
3. If you make a gift to a trust, it is important to consider whether the trust should be designed as a "grantor trust" for federal income tax purposes. A grantor trust allows you to pay income tax on the income of the trust which indirectly increases the value of the trust assets.
4. If you have previously entered into one or more transactions with a trust that is intended to continue for grandchildren and even later generations ("dynasty" trust) involving a sale and the trust has promissory notes outstanding, you might consider using part of your exemption to reduce those promissory notes, simplifying administration and complexity.

For more information please contact one of the lawyers listed below.