Important Update to Tax Proposals

November 2, 2021

Katz Baskies & Wolf has previously updated clients on the September 13 House Ways and Means Committee tax change proposals (click here) and the possible impact of those changes on Irrevocable Life Insurance Trusts or "ILITs" (click here).

On October 28, 2021, the White House and the House Ways and Means Committee presented a new Build Back Better Act, which greatly reduced the scope of tax changes likely to impact clients. In fact, while the new tax proposal does address domestic corporate tax reforms, international corporate tax reforms and tax increases on high-income individuals (those with incomes greater than $10M) and trusts (those with incomes in excess of $200,000), perhaps the new tax act is most noteworthy for those proposals no longer included.

Among the many proposals discussed previously or included in the September 13 tax proposal, the following changes are NOT included in the October 28 tax bill proposal:

- There is no increase in the top personal income tax rate
- There is no increase in the top capital gains tax rate
- There is no change in the top corporate tax rate
- There is no reduction in the $11.7 million gift/estate/GST tax exemptions
- There are no changes to the ways in which grantor trusts are treated for tax purposes
- There are no changes with regard to valuation discounting
- There are no proposed changes to IRAs and Roth IRAs
- There are no changes impacting real estate investors – i.e., no changes to the rules on like-kind exchanges and no changes to step-up in basis on death
- There are no changes to the "carried interest" rules

While there are tax changes worthy of further review (such as the new corporate alternative minimum tax, imposing a 15% minimum tax on corporations with adjusted financial statement income over $1 billion), most clients will be pleased to see what is not included in the tax act. Of course "it is not over until it is over", and sometimes proposals that are left out of a tax act may return before the act is finalized. Thus, careful attention is still required to potential tax law changes that may impact you.

We have many clients that are engaged in active planning to maximize the use of their lifetime exemption ($11.7M) out of concern that it would be reduced to $5M, inflation adjusted (works out to approximately $6M). Two points to emphasize in that regard: First, the law as it stands reduces the lifetime exemption to $5M, inflation adjusted, effective as of January 1, 2026. Thus, the proposed change would have accelerated planning that clients would have needed to address in the near future regardless of the current legislative proposals.

Second, and perhaps even more importantly, high net worth clients are always advised to shift assets out of their estates as early as possible to enable the growth of those assets to occur free of estate and gift tax. By way of example, assume that a client has a Nasdaq-weighted portfolio. The Nasdaq index has appreciated more than three-fold over the last 5 years. A gift of $10M of such a portfolio five years ago would mean that $20M of assets had grown outside of the client's estate, an estate tax savings of $8M! This is a reminder that the "blocking and tackling" of estate planning – those core principles that have served clients well for decades – should still be emphasized.

As always, we welcome any questions you may have.

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