Halliday Private Trust
Integrated Trust Solutions for Clients

Trust Connection

A Monthly Report of Trust News and Information

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Welcome to *Trust Connection,* our monthly newsletter highlighting Trust news and information. Each month we will feature timely articles of interest.

About Us

At Halliday Private Trust, it is our mission to assist our clients in the process of providing solutions, specifically through a wide range of financial advice.

Since 1982, we have utilized a full spectrum of financial services to help our clients navigate every major hurdle in their financial lives. Because we are an independent financial services firm, we utilize an open architecture approach to locating the most suitable investment options for our clients.

Our role is to help clients make smart decisions about their money. We understand that each client has unique needs and requires personalized solutions based on their goals, objectives and concerns.

Washington Wishlist

Congress continually seeks to make changes, and those changes can affect us and our planning significantly. This article is about PROPOSED legislation, which warrants a level of concern. It's not usually necessary to spend a great deal of time with proposed legislation except to gather the general trends and ideas floating around Congress and to think about their impact on planning, even to devise defensive techniques. The historical reality is that very little of this type of legislation will pass in a presidential election year, but some of it may affect our choice of candidates. These are serious proposals fully intended to become law, but they still need the backing of Congress and the president.

The following proposals would affect retirement plans.

Simplify Minimum Required Distribution (MRD) Rules

This proposal would "harmonize" the application of the MRD requirements for holders of Roth accounts by generally treating Roth IRAs in the same manner as all other tax-favored retirement accounts, i.e., requiring distributions to begin shortly after age 70½, without regard to whether amounts are held in designated Roth accounts or in Roth IRAs. This would only avoid continued income-tax-deferred growth since Roth accounts are after-tax dollars. In addition, individuals would not be permitted to make additional contributions to Roth IRAs after they reach age 70½, thereby avoiding additional income tax sheltering.

Limit Non-spouse Beneficiaries' Inherited IRA Distributions to Five Years or Less

This proposal would effectively eliminate the "stretch IRA" technique often used to spread out distributions during a child's lifetime. It would instead require an outright distribution of the plan, and thus full income taxation of traditional plans, within approximately five years of death of the IRA owner. There are exceptions for spouses and certain disabled individuals and minors. This has been a popular proposal estimated to raise more than $5 billion in the next 10 years. Planning pointer: Consider use of a Charitable Remainder Trust (CRT) as beneficiary of the IRA, which could then create a lifetime payout of a predetermined percentage to the beneficiary for life with remainder to charity. The initial receipt of lump-sum distribution would not be taxed because the trust is exempt; only the payments would be subject to income tax when received, and the life payment stream simulates the "stretch."

Limit The Total Accrual of Tax-Favored Retirement Benefits

This proposal would prohibit additional contributions or receipt of additional accruals under tax-favored retirement arrangements when a certain threshold is reached. Currently, the maximum permitted accumulation for an individual at age 62 is approximately $3.4 million. This is estimated to raise more than $26 billion in tax revenue over 10 years.

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Repeal Exclusion of Net Unrealized Appreciation In Employer Securities

This proposal would repeal the exclusion of net unrealized appreciation in employer stock in the year of a distribution for participants in tax-qualified retirement plans who have not yet attained age 50. This would affect individuals who are invested in their employers' stock in their qualified retirement plans where that stock is highly appreciated. This is a great benefit for those to whom it applies and is estimated to raise more than $2 billion in tax revenue during the first 10 years.

The next five proposals examine proposed changes to the estate and gift rules.

Restore The Estate, Gift, And GST Tax Parameters In Effect In 2009

This proposal was part of the president's platform in his last election, but it has had no success in passing. The proposal would raise more than $189 billion over 10 years by making permanent the estate, GST, and gift tax parameters as they applied in 2009. This would mean a top tax rate of 45 percent and the exclusion amount $3.5 million, not indexed for inflation, for estate and GST taxes, and $1 million for gift taxes. For surviving spouses, portability would still be available in full on death but be limited during life to the exemption the decedent could have applied to his or her gifts made in the year of his or her death, substantially limiting some of the opportunities provided under current law.

Modify Transfer Tax Rules For GRATs And Other Grantor Trusts

Various proposals have been made throughout the years to limit the effectiveness of Grantor Retained Annuity Trusts (GRATs), which are specifically created in the Internal Revenue Code, and these rules have resurfaced. In addition, new rules have surfaced to limit sales to Intentionally Defective Grantor Trusts (IDGTs), a successful creation of the estate planning community, thus harder to legislate out of existence. The GRAT proposals repeat the familiar 10-year minimum term to increase the mortality risk but likewise add a maximum term to avoid creative super-long-term GRATs and also impose a minimum remainder value of equal to the greater of 25 percent of the value of the assets contributed to the GRAT or $500,000. Finally, the proposals would prohibit any decrease in the annuity during the GRAT term and prohibit the grantor from engaging in a tax-free exchange of any asset held in the trust, which is often used to lock in successful levels of appreciation or take back appreciated assets to receive a stepped-up basis upon death.

The proposals for sales to IDGTs is complex but basically includes the portion of the trust subject to a "transaction" to gift or estate tax as "deemed owner." The tax would be payable from the trust.

Limit Duration of Generation-Skipping Transfer (GST) Tax Exemption

Under this proposal, rather than questioning the state laws that provide for no rule against perpetuity, the GST exemption would effectively melt away. On the 90th anniversary of the creation of a trust, the GST exclusion allocated to the trust terminates, increasing the inclusion ratio to one. This would generate no immediate revenue but is an IRS defense to the creation of perpetual trusts.

Modify GST Tax Treatment of Health And Education Exclusion Trusts (HEETs)

Trying to eliminate the use of perpetually GST tax-free irrevocable trusts using special distribution criteria, this proposal would apply the GST tax exemption only to a payment by a donor made directly to the provider of medical care or to the school in payment of tuition and not to trust distributions, even if for those same purposes. Understanding that some were perhaps stretching the intention of the law, this proposal seems so broad that appropriate use in planning could be affected.

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A LOCAL TRUST SOLUTION

Call us today at (800) 786-1598 to learn more about working with Halliday Private Trust.

For information and assistance, please feel free to contact one of our Trust Advisors:

- Michael F. Fleming, Esq.
- Andrew Halliday, Esq.
- Sean S. Mohammadi

Simplify Gift Tax Exclusion For Annual Gifts

It's important to watch out when Congress says "simplify" or "harmonize." With this proposal, it's possible $3 billion could be raised in 10 years by leaving the annual exclusion at current levels but limiting it to a total of $50,000 per year, which would result in a real blow to wealthy people with large families. In addition, it would change the qualification rules such that they would not require the same "present interest" test that requires us to use "Crummey" withdrawal powers in certain trusts, notably irrevocable life insurance trusts. While the simplification would be a blessing, the limitation would not.

Reform The Taxation of Capital Income

This proposal is in two basic parts: change the rate, and then increase the scope, raising a whopping $207 billion in 10 years. The proposal is first to increase the highest long-term capital gains and qualified dividend tax rate from 20 percent to 24.2 percent. The 3.8 percent net investment income tax would still apply as under current law, so the maximum total capital gains and dividend tax rate including net investment income tax would thus rise to 28 percent. So the rate rises, but then the proposal seeks to utilize the capital gain tax to effectively increase the estate tax and apply it to a much broader portion of the population.

Transfers of appreciated property generally would be treated as a sale of the property. The donor or deceased owner of an appreciated asset would realize a capital gain at the time the asset is given or bequeathed to another. The gain realized would be the asset's fair market value on the date of the transfer minus the donor's basis in that asset.

Yes, there are some limits, such as exceptions for transfers to spouse or charity, which exist under current gift and estate tax law, and for tangible personal property (but not collectibles). Outside of that, exemptions are for the first $100,000 in gain per person, with similar portability rules for couples, and rules that parallel the primary residence sale rules, and some small business rules. Nonetheless, it seems this would subject to tax a wide cross-section of America.

Summary

This is a lot of technical information to digest, and again, these are merely proposals, not law. It's easy to see why it is important to seek the help of a team of qualified advisors who stay abreast of the rules, the changes, and in this case, the potential changes, to devise solutions that make sense for your specific situation.

The proposals discussed here come from the General Explanations of the Administration's Fiscal Year 2016 Revenue Proposals, commonly referred to as "The Greenbook" due to the color of its cover from the government printing office. Available online at https://www.treasury.gov/resource-center/tax-policy/Documents/General-Explanations-FY2016.pdf

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