WRMarketplace
An AALU Washington Report

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Friday, April 28, 2017 **WRM #17-18**

The *WRMarketplace* is created exclusively for AALU members by experts at Greenberg Traurig and the AALU staff, led ***by Jonathan M. Forster, Steven B. Lapidus, Martin Kalb, Richard A. Sirus, and Rebecca Manicone.*** **WRMarketplace #17-18 was written by Greenberg Traurig Shareholder Jonathan M. Forster.**

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TOPIC: President Trump Releases Tax Proposals – Keep Calm & Plan On.

MARKET TREND: Waiting on the government is not a plan or an option. Instead, illustrating how clients can still implement proactive, flexible plans can allay their concerns and give them a sense of control in the face of the "hype" surrounding tax reform.

SYNOPSIS: President Trump's recently-released outline of his tax reform proposal mirrors his campaign promises, and his proposals can be seen as a starting point in negotiations. Achieving major tax reform is very difficult, which is why it rarely occurs. Once statutory language is drafted, and specific provisions are down on paper, there tends to be pushback from a variety of affected stakeholders. Further, there are political and procedural difficulties with using reconciliation that create additional hurdles, coupled with the costs of reform and new expense priorities, like infrastructure. This will make it difficult for Republicans to achieve the ambitious goals they have laid out for tax reform. Clients should still move forward with legacy and life insurance planning that satisfies their practical needs and provides flexibility. Grantor trusts, irrevocable life insurance trusts (ILITs), estate freezes like grantor retained annuity trusts (GRATs) and installments sales to grantor trusts, and charitable planning should all remain appealing approaches.

TAKE-AWAYS: Clients and their advisors should stay consistent in implementing life insurance and legacy plans. Interim planning should involve multi-faceted approaches involving trusts, ILITs, and/or estate freezes, which can be tailored to address practical concerns while permitting adjustments for future tax changes. Incremental planning with life insurance, such as through convertible term policies or those with return-of-premium riders, also can preserve insurability and allow clients to plan without feeling locked-in. Right now, clients should touch base with their advisory team to take advantage of current planning strategies, review charitable planning and the timing of gains and deductions based on this year's known tax rates relative to the future, and set the groundwork to move forward should tax legislation progress.

On Wednesday, the Trump Administration released a one-page "blueprint" of President Trump's general tax proposal (the Trump Tax Blueprint, "**TTB**"). Although covered with much fanfare, the TTB differs very little from President Trump's campaign proposals and does very little to change the post-election legacy and life insurance planning environment.

SAME OLD, SAME OLD

The specific tax proposals mainly follow those made by President Trump during his Presidential campaign, with certain issues remaining unspecified:

Tax	Currently	Campaign Proposal	TTB
Individual Income Tax Rates	10%, 15%, 25%, 28%, 33%, 35%, 39.6%	12%, 25%, 33%	10%, 25%, 35%
Capital Gains Tax Rates	0%, 15%, and 20%	Same	Same
Corporate Tax Rate	35%	15%	15%
Net Investment Income Tax	3.8%	Repealed	Repealed
Alternative Minimum Tax	Applies to income over $54,300 (single); $84,500 (married joint filers (**MJR**))	Repealed	Repealed
Estate Tax	40% (estates over $5.49 million)	Repealed	Repealed
Capital Gains Tax at Death	None: basis step-up for estate assets	Taxed after $10 million exemption	Unspecified
Gift & Generation Skipping Transfer Tax	40% (total transfers over $5.49 million)	Unspecified	Unspecified

Tax	Currently	Campaign Proposal	TTB
Standard Deduction	$6,350 (single) $12,700 (MJR)	$15,000 (single) $30,000 (MJR)	$12,700 (single) $25,400 (MJR)

PROPOSALS ONLY – BARELY THE BEGINNING

The TTB is only an opening gambit as the Administration begins to negotiate with Congress on the specifics of tax reform. It will be very challenging to enact revenue-neutral tax reform with a 15% rate on C corporations, much less a package that also reduces pass-through rates to 15%. Revenue-neutrality is key because Republicans likely will need to pass tax reform legislation using budget reconciliation, a special Senate procedure that allows the majority party to bypass normal procedural rules and pass legislation with 51 votes (instead of 60).

To use reconciliation, however, the bill must be revenue-neutral in the years after the budget window specified in the reconciliation instructions—typically a 10-year window. In other words, reconciliation limits the length of time that tax reform can run up the deficit. One way to achieve budget neutrality is to "sunset" any tax reform legislation after 10 years and have the laws revert to the previous tax regime (as done with the 2001 tax cuts under President Bush). Achieving a Republican consensus on this type of reform, however, may be difficult, especially for Republicans who want permanent tax reform or no increase in the deficit.

WHAT TO DO – INTERIM PLANNING

Keep Calm. Despite the intense coverage of the TTB's tax reforms and how they could impact planning, specific changes remain far from certain and, as indicated, may only survive for a limited time. Until we see proposed legislation with traction, attempting to anticipate and plan based on the numerous possibilities will lead to overly-reactive and chaotic planning that has little basis in reality. Since the fundamental practical advantages of long-term legacy and life insurance planning will remain regardless of any tax changes, clients should continue to plan with that focus.

Remember Practical Needs. Tax considerations, alone, should never drive legacy planning, since most clients face equally, if not more critical, practical concerns that can be addressed with a proper legacy plan, including:

- Centralized wealth management and development of a coherent family investment philosophy
- Confidentiality and creditor protection for clients and family members (providing an elegant solution to pre- and post-marital planning for junior generations)
- Control of the flow of information and assets to younger beneficiaries
- A platform for teaching financial responsibility and stewardship with oversight using family and/or professional wealth managers/trustees

- A vehicle for business succession and family governance of shared assets
- Consolidation of assets in a single ownership structure to facilitate the transfer of diverse investments among generations without creating fractional ownership
- Pooling of assets within the trust/entity to provide greater access to certain investment opportunities and the ability to achieve better diversification and risk allocation

Continue Planning with Trusts. Regardless of tax changes, trusts remain customizable, multi-purpose planning vehicles that provide control, ***creditor protection*** (a key concern for many clients), flexibility, family support, and wealth stewardship over multiple generations. The use of irrevocable trusts also ensures that trust assets remain outside of a taxable estate if estate tax repeal does not occur or remain permanent. The use of ILITs will remain particularly important in life insurance planning for these reasons.

Incorporate Flexibility. Concerns over future tax changes can be resolved by incorporating flexibility into current plans, such as: (1) including multiple options in documents regarding distributions, powers of appointment held by beneficiaries, and the apportionment of tax liabilities based on existing tax laws, (2) giving clients powers of substitution over grantor trusts to reacquire low basis assets, (3) including "decanting" provisions, which allow trustees to distribute assets to a new trust with different administrative and distribution provisions, and (4) using trust protectors to make various discretionary tax elections or trust modifications.

Move Forward with Life Insurance Planning. Even with tax uncertainty, life insurance planning remains prudent for accomplishing multiple legacy plan objectives. Even with Congress debating tax reform plans that include the difficult task of repealing the estate tax, personal cash value life insurance may serve a vehicle for providing cash accumulation and retirement savings during life, as well as earnings replacement and family security in the event of an untimely death.

Use Incremental Planning. Even wary clients can plan incrementally with life insurance. Acquisition of a convertible term policy can preserve insurability without impacting flexibility. Clients also can opt for monthly rather than annual premiums payments. Further, return of premium riders can provide significant flexibility by returning premiums to clients if they decide to cancel the policy, or clients can reduce policy face amounts, stop paying premiums, etc. These features allow clients to plan now without feeling locked-in.

Consider Estate Freeze Planning. Planning that results in minimal or no taxable gifts and relies on current interest rates for its hurdle rates (e.g., the 7520 rate and the applicable federal rate) can reduce a client's taxable estate without eliminating the ability for basis step-up planning at death, according to longstanding and appropriate tax principles (think zeroed-out GRATs and installment sales to grantor trusts). These "estate freeze" approaches:

- Take advantage of current low interest rates ***that are expected to rise soon.***

- ***Transfer only future appreciation, returning the initial value of the transferred assets to the client*** (plus growth up to the applicable hurdle rate).
- Allow clients to ***retain a predictable income stream*** from the transferred asset.
- ***Preserve gift and estate tax exemptions*** for later planning, if needed.

RIGHT NOW – FRONT & CENTER

Review Charitable Planning. With many clients focused on income taxes, interest in charitable planning is on the rise, including the use of donor advised funds, private foundations, and charitable lead annuity trusts. These techniques can provide current income tax deductions to help offset taxable income. Making charitable gifts this year may have additional benefits, since this year's income tax rates are known and may be high relative to the future.

Consider Timing of Gains & Deductions. Of course, clients should remain aware of legislative developments regarding taxes. If it appears likely that reductions are expected in income and capital gains rates next year, clients will want to consider whether and to what extent they can move tax deductions and losses into this year and postpone gains and income until next.

Check-In with Advisors. Clients should touch base with their advisory team to review the above, take advantage of current planning strategies, keep updated on current developments, and set the groundwork to move forward should tax legislation develop.

TAKE-AWAYS

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