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Ideas for Post-Election Tax Planning

by Dennis Monroe and Richard Gibson

There has been a great deal of speculation about the post-election tax policy and when it will, if at all, be implemented. What we would like to do in this article is not just speculate about the policy but provide some ideas you can use in the face all of this uncertainty.

Most commentators believe tax law itself and its basic approach will remain the same with some modifications and, it is hoped, lower rates. Other than the much discussed Border Tax Adjustment, significant different tax structures, such as consumption tax, value added tax or flat tax are not likely to be proposed. Given this assumption, we will be dealing with a familiar tax code, with a layover of the new Administration's policy.

Below are 10 business-planning ideas we have gleaned from the speculation.

1. Corporate Status—If you are a C corporation, your rates should go down. Therefore, see what happens to rates before making an S election or any major choice of entity change.

2. Flow-Through Entities—If you are a flow-through entity, such as an S corporation, LLC or partnership, most proposals suggest the flow-through income should be taxed at a lower rate. How that will take place is uncertain, but we would suggest you hold up on distributions and income to the extent possible. Deferring income is important because we do not know if any lower tax rates will be retroactive.

3. Multiple Entities—In light of the points above, an effective strategy may be to use multiple entities, particularly a fiscal-year entity to shift income to take advantage of whatever the new tax law may be. If changes are not retroactive, using multiple entities might allow for shifting income between different tax rates in the same calendar year.

4. Capital Expenditures—There are current proposals including providing business with a direct expensing approach concerning capital expenditure versus the complicated system we have now of bonus and accelerated depreciation. Most businesses cannot delay or forego capital expenditures, but this proposal is one that should be watched closely in connection with any capital expenditure plan covering the next 12 to 24 months.

5. Income Characteristics—On the revenue side, it looks like the capital gains rate will still continue, so there is no need to take early gains, particularly in light of the tremendous rise of the stock market. (We will talk later about the gift of appreciated stock and charitable contributions.)

6. Carried Interest—Carried interest income in this context means income that normally would flow through and be taxed at ordinary tax rates. There has been discussion that if lower rates on flow-through entities are implemented, recipients of carried interests will still be taxed at the full individual rate versus capital gains rates. Because of this, it may be appropriate to consider reclassifying or restructuring any carried interest anticipated to be provided in 2017.

7. Itemized deductions—Itemized deductions may cause the individual tax payers the most significant changes from current tax law, because there has been discussion of phasing out most of them. Our belief is that making charitable gifts, particularly of appreciated stocks sooner rather than later is prudent. At this time the House GOP has called for retaining the mortgage interest and charitable deductions.

8. Alternative Minimum Tax (AMT)—In terms of planning, think about the possibility of the repeal of the AMT, which means timing capital gains rate and deductions that normally would be excluded from AMT income may become more important. Since we do not know what is going to happen, the key may be to wait and make any arrangements later in the year.

9. Estate tax—President Trump has consistently called for repealing the estate tax law. We are not sure that will happen, since there is so little revenue generated from the estate tax. It has been postulated that if the estate tax is repealed, the new administration may consider taxing capital gains rates on appreciated assets held at death to the extent such gains exceed $10 million. In the past, these assets have avoided capital gains tax because of the step up in basis. A change, however, may call for new planning ideas.

10. Miscellaneous—Family tax provisions are encouraging families to set aside funds for childcare and elder care and get the deductions for those. We do not know yet if there will be income limitations. Also, we do not know if most of the income limitation items will go away. Newly proposed dependent care savings accounts could be created for future adult care—considering our aging population—and may be a very good idea and planning opportunity.

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We think one of the most significant developments accompanying the new administration's tax reform will be the lower tax rate for pass-through entities. Though still very much up in the air, this may have the greatest impact on corporations, restaurants and franchises.

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