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Tax Briefing | Wolters Kluwer

2015 Year-End Tax Planning

October 14, 2015

Special Report

HIGHLIGHTS

- Developing Year-End Strategies
- Amplifying Permanent And Temporary Incentives
- Planning For The Affordable Care Act
- Incorporating New Developments
- Anticipating Tax Legislation

INSIDE

Year-End Individual Planning 1
Affordable Care Act--Individuals........ 3
Year-End Business Planning................. 4
Affordable Care Act—Business 5
Traditional Year-End Techniques 5
Filing Deadline Changes....................... 6
Top Ten Issues.. 6

Year-End Strategies: Leveraging Traditional Techniques And New Developments

Year-end tax planning for individuals and businesses provides not only the opportunity to review the activities of the past year, it also generates an invaluable opportunity to leverage tax planning techniques as they relate to new developments. Individuals and businesses need to question the status quo, explore new strategies, and evaluate potential plans – most of which is done best before the current tax year closes. Year-end tax planning for individuals and businesses is results driven and many developments in 2015 can contribute to a year-end strategy that delivers the greatest value.

PLANNING NOTE. *As in past years, tax legislation – or the lack of tax legislation –is an essential consideration in year-end planning. At the time this briefing was prepared, a host of individual and business tax extenders had not yet been renewed by Congress for 2015. Comprehensive tax reform continues to be discussed in Washington, but as year-end approaches it is almost certain that no major changes will be made to the Tax Code. Some stand-alone bills, discussed below, and the expected passage of the extenders, may provide year-end planning opportunities.*

YEAR-END INDIVIDUAL PLANNING

As in past years, traditional year-end income shifting techniques may be valuable. Taking inventory of income and expenses to calculate whether strategies to accelerate or defer one or the other, before the current tax year closes, should be employed as applicable at year-end 2015 as it has been in the past. Assessing current gains and losses, to map out a year-end buy, sell or hold strategy later makes particular sense as markets continue to make adjustments.

Income And Capital Gains/ Dividends

For individuals, the income tax rates for 2015 are unchanged from 2014: 10, 15, 25, 28, 33, 35 and 39.6 percent (although the start of each bracket continues to be inflation-adjusted upward each year). The tax rates for qualified (net long-term) capital gains and dividends, which are keyed to the general income tax brackets, are also unchanged for 2015, ranging from 20 percent for those in the 39.6 percent income tax bracket, down to 15 percent for those within the 25 to 35 percent brackets, and to zero percent for those otherwise in the 10 or 15 percent income tax brackets.

STRATEGY. *Spikes in income, whether capital gains or other income, may push capital gains into either the top 39.6 percent bracket (for short-term gains) or the 20 percent capital gains bracket. Spreading the recognition of certain income between 2015 and 2016 may help minimize the total tax paid for the 2015 and 2016 tax years. Likewise, those individuals finding themselves in the 15 or 10 percent tax brackets should consider recognizing any long-term capital gain available to the* *extent that, with other anticipated income, will not exceed the top of the 15 percent bracket ($74,900 for joint filers and $37,450 for singles in 2015).*

STRATEGY. *Another strategy for some taxpayers might be to look for a short-term investment (bonds, etc.) payable into next year, intended to defer the receipt of taxable income from 2015 to 2016. The taxpayer would not recognize income on such investments until the maturity date of the investment in 2016.*

PLANNING NOTE. *Marital status (single, married or divorced) for the entire tax year is determined on December 31. Because of varying income tax brackets depending upon filing status, a marriage penalty or a marriage benefit may result for any particular couple. As a general rule, if each partner has income approximately in the same amount of the other, they will pay more in combined tax filing a married, joint return rather than as two single individuals. Accelerating or postponing marriage or divorce at year end might be considered based upon this difference in tax brackets.*

Net Investment Income Tax

Since creation of the NII tax, individuals have learned that NII encompasses more than capital gains and dividends. NII includes income from a business in which the taxpayer is a passive participant. Rental income may also be considered NII unless earned by a real estate professional. The NII threshold amount is equal to: $250,000 in the case of joint returns or a surviving spouse; $125,000 in the case of a married taxpayer filing a separate return, and $200,000 in any other case. These threshold amounts are not indexed for inflation.

STRATEGY. *If possible, keeping modified adjusted gross income (MAGI) below the thresholds is an avenue to explore. Spreading income out over a number of years or offsetting the income with above-the-line deductions are possible approaches. Again, spikes in income should be carefully managed.*

PLANNING NOTE. *The NII tax is separate from the Additional Medicare Tax. Individuals who anticipate liability for Additional Medicare Tax may request that their employer(s) take out an additional amount of income tax withholding before year end. This additional amount will be applied against taxes shown on the taxpayer's individual income tax return, including any Additional Medicare Tax liability, and help prevent any estimated tax shortfall.*

> "Year-end tax planning for individuals and businesses is results driven and many developments in 2015 can contribute to a year-end strategy that delivers the greatest value."

Alternative Minimum Tax

For 2015, the AMT exemption amounts are $53,600 for single individuals and heads of household; $83,400 for married couples filing a joint return and surviving spouses; and $41,700 for married couples filing separate returns.

STRATEGY. *No single factor automatically triggers AMT liability, but some common factors are itemized deductions for state and local income taxes; itemized deductions for miscellaneous expenditures; itemized deductions on home equity loan interest (not including interest on a loan to build, buy or improve a residence); and changes in income from installment sales. Investments, especially in oil and gas, may also generate "tax preferences" that may add up to AMT liability.*

Pease Limitation/Personal Exemption Phaseout

For 2015, the Pease limitation threshold is $309,900 for married couples and surviving spouses; $284,050 for heads of households; $258,250 for unmarried taxpayers; and $154,950 for married taxpayers filing separately. The threshold adjusted gross income amounts for the personal exemption phaseout (PEP) are the same as the threshold amounts for the Pease limitation.

STRATEGY. *Potential reduction of the value of certain itemized deductions and personal exemptions may be lessened by some individuals by managing adjusted gross income as well as affected itemized deductions. For purposes of the limitation on itemized deduction, a taxpayer's total, itemized deductions do not include deductions for medical expenses, investment interest expenses, casualty or theft losses, and allowable wagering losses.*

Same-Sex Marriage

In *Obergefell, 2015-1* USTC *¶50,357*, the U.S. Supreme Court held that the Fourteenth Amendment requires a state to license a marriage between two people of the same sex. Further, states must recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out-of-state. *Obergefell* was not a tax case, but the Supreme Court's decision will impact married same-sex couples not only with return filing but in other areas, such as employee benefits and health care.

Tax Extenders For Individuals

Under current law, a number of popular but temporary tax incentives are not available for 2015 unless extended by Congress. For individuals, these include the state and local sales tax deduction, the higher education tuition and fees deduction, a mortgage debt forgiveness exclusion, the teachers' classroom expense deduction and the Code Sec. 25C residential energy property credit.

Child Tax Credit

The *Trade Preferences Act of 2015* places new limits on the child tax credit for taxpayers who elect to exclude from gross income for a tax year any amount of foreign earned income or foreign housing costs. These taxpayers will not be able to claim the refundable portion of the child tax credit for the tax year.

Estate And Gift Taxes

The maximum federal unified estate and gift tax rate is 40 percent with an inflation-adjusted $5 million exclusion for gifts made and estates of decedents dying after December 31, 2012. The annual gift tax exclusion allows taxpayers to give up to an inflation-adjusted $14,000 to any individual ($28,000 for married individuals who "split" gifts), gift-tax free and without counting the amount of the gift toward the lifetime $5 million exclusion, adjusted for inflation.

PLANNING NOTE. *The $14,000 ($28,000) annual exclusion is a use-it or lose-it benefit; it resets each January 1st but cannot be then retroactively taken for the prior year. The applicable exclusion amount, as adjusted for inflation, is $5,430,000 for gifts made and estates of decedents dying in 2015. This exclusion jumps to $10.86 million when spouses combine exclusions.*

Expatriate Gifts

The IRS issued proposed regulations under the *Heroes Earnings Assistance and Relief Tax Act of 2008* that apply to transfers of property from individuals who have abandoned U.S. citizenship or residency and who later make a gift or bequest (a "covered" transfer) to a U.S. taxpayer (either an individual or a domestic trust).

PLANNING NOTE. *An individual cannot escape the tax by making transfers before a certain deadline. The tax itself has applied since 2008.*

Year-End Retirement Planning – Employer Plans

One of the first steps for retirement savings is to contribute to an employer-sponsored elective salary deferral plan (particularly to the extent of an employer match). These salary deferral plans include 401(k) plans, 403(b) plans, and 457 plans (depending on the type of employment).

STRATEGY. *For 2015, the inflation-adjusted elective salary deferral limit for 401(k), 403(b) and 457 plans is the lesser of $18,000 or 100 percent of compensation. If an employer makes contributions, the total contribution for the 2015 year from both the employee and the employer is capped at $53,000 (not including an additional $6,000 for catch-up contributions). Plans rules vary on the extent to which ability to increase contributions at year-end.*

myRAs

myRAs might be viewed as "starter IRAs" in that they cap out at $15,000 (or 30 years, whatever comes first). The account follows all the other tax rules associated with regular Roth IRAs. However, myRAs have no fees and can be opened for as little as $25 through payroll direct deposit. The account balance will never go down in value and the security in the account, like U.S. savings bonds and other Treasury securities, is guaranteed. It is open to anyone who has an annual income currently of less than $129,000 a year for individuals and $191,000 for couples; but only through an employer, whose participation is not mandatory.

AFFORDABLE CARE ACT—INDIVIDUALS

Unless exempt, the ACA requires that all individuals carry minimum essential coverage or make a shared responsibility payment. Individuals with health insurance coverage should ascertain that their coverage satisfies the ACA's minimum essential coverage requirements. Individuals without minimum essential coverage may be liable for a shared responsibility payment unless exempt. Individuals who obtain health insurance coverage through the ACA Marketplace may be eligible for the Code Sec. 36B premium assistance tax credit.

STRATEGY. *The coverage requirement applies separately to each month. Individuals are treated as having minimum essential coverage for a month as long as the individual has coverage for at least one day during that month.*

A number of exemptions are available to qualified individuals:

- Religious conscience exemption
- Hardship exemption
- Exemption for members of federally-recognized Native American nations
- Exemption for members of a health care sharing ministry
- Exemption for incarcerated individuals
- Short coverage gap exemption
- Exemption for individuals not lawfully present in the U.S.

STRATEGY. *Generally, a gap in coverage that lasts less than three months qualifies as a short coverage gap. If an individual has more than one short coverage gap during a year, the short coverage gap exemption only applies to the first gap.*

Individual Shared Responsibility Payment

For 2015, the individual shared responsibility payment is the greater of two percent of household income that is above the tax return filing threshold for the individual's filing status, or the individual's flat dollar amount, which is $325 per adult and $162.50 per child, limited to a family maximum of $975, but capped at the cost of the national average premium for a bronze level health plan available through the Marketplace in 2015. For 2015, the monthly national average premium for qualified health plans that have a bronze level of coverage and are offered through the Marketplace is $207 per individual and $1,035 for a shared responsibility family with five or more members.

STRATEGY. *Open enrollment for coverage through the Health Insurance Marketplace for 2015 has closed. However, some qualifying life events may make an individual eligible for non-filing season* *special enrollment. An individual who experiences a complex situation may also qualify for special enrollment.*

Health Flexible Spending Arrangements

Contributions to health flexible spending arrangements (health FSAs) are capped under the ACA at $2,500 (indexed for inflation). Any salary reductions in excess of the cap subject an employee to tax on distributions from the health FSA. For 2015 and again for 2016, the cap is $2,550.

STRATEGY. *Health FSA balances are use-it or lose-it each year, except to the extent a plan provide a $500 carryover.*

YEAR-END BUSINESS PLANNING

As in past years, business tax planning is uncertain because of the expiration of many popular but temporary tax breaks that have been part of an "extenders" package of legislation. Also added to the mix is the far-reaching Affordable Care Act (ACA). Other changes to the tax laws in 2015 made by new regulations and other IRS guidance should also be considered in assessing year-end strategies.

Code Sec. 179 Expensing

Code Sec 179 property includes new or used tangible property that is depreciable under Code Sec. 1245 and that is purchased to use in an active trade or business. Under enhanced expensing, for 2014 and prior years, businesses could write off ("expense") up to $500,000 in qualifying expenditures, and would not reduce this amount unless expenditures exceed $2 million. Until the enhanced provisions are extended, these limits, respectively, are $25,000 and $200,000 for 2015 and later years.

PLANNING NOTE. *Qualifying property has included off-the-shelf computer software and certain real property.*

Bonus Depreciation

Congress provided for 50-percent bonus depreciation through 2014 (through 2015 for certain transportation and other property). Legislation introduced in Congress in 2015 would extend bonus depreciation through 2016 or, alternatively, make bonus depreciation permanent.

STRATEGY. *Because bonus depreciation, if and when extended, can be elected on the 2015 return filed in 2016, it is not necessary for a business to make an immediate decision on its use, although qualifying property must nevertheless be purchased and placed in service in 2015. Bonus depreciation is optional and businesses can elect not to use it. Electing out may be appropriate if the business wants to spread its depreciation deductions over future years more evenly.*

Research Tax Credit

The research credit is claimed for increases in qualified research expenditures (QREs) and for increased payments to others, such as universities, for basic research. The research credit is a popular extender and is expected to be renewed.

Small Business Stock

Code Sec. 1202 provides that noncorporate investors in qualified small business stock can exclude 100 percent of any gain realized on stock acquired after September 27, 2010, and before January 1, 2015, provided the stock is held more than five years. The corporation must conduct a qualified trade or business and must not have gross assets over $50 million. The exclusion percentage is 50 percent for qualifying stock acquired after December 31, 2014, unless Congress decides to extend the increased exclusion.

STRATEGY. *Eligible gain from disposing of qualified stock is subject to a limit of $10 million, or 10 times the basis of the stock, if greater.*

S Corp Built-in Gains

If a C corporation converts to an S corporation, and the S corporation sells, during the recognition period, assets that had built-in gain at the conversion, a corporate level tax at the highest marginal rate for corporations applies to the built-in gain. This prevents a C corporation from avoiding a corporate-level tax on appreciated property by converting to an S corporation, which sells the assets and passes the gain through to shareholders. The recognition period was 10 years after the conversion, reduced to seven years, and then reduced to five years through 2014. With a shorter period, the S corporation can sell the asset more quickly without having to recognize the additional tax.

COMMENT. *Currently, the 10-year recognition period applies for 2015.*

Other Business Extenders

Other beneficial tax provisions for business would be included in extenders legislation for 2015 and beyond. These include:

- New Markets Tax Credit;
- Work Opportunity Tax Credit;
- Employer wage credit for activated military reservists;
- Subpart F provisions;
- Enhanced deduction for contributions of food inventory;
- Empowerment zones;
- Indian employment credit;
- Low-income credits for subsidized new buildings and military housing;
- Treatment of regulated investment companies (RICs); and
- Basis reduction of S corporation stock after donations of property.

"Repair" Regulations

A potentially beneficial provision in final, so-called "repair" regulations is the *de minimis* safe harbor. The safe harbor enables taxpayers to routinely deduct items whose cost is below the specified threshold.

STRATEGY. *The de minimis safe harbor is an annual election, not an accounting* *method, so it can be made and changed from year to year. The current threshold is set at:*

- *$5,000 for taxpayers with an applicable financial statement (taxpayers with an AFS should have a written policy in place by the beginning of the year that specifies the amount deductible under the safe harbor).*
- *$500 for taxpayers without an AFS.*

PLANNING NOTE. *Efforts being made in Congress to raise the $500 threshold for small businesses have met with resistance so far this year.*

Routine Service Contracts

The IRS has provided a safe harbor under which accrual-basis taxpayers may treat economic performance as occurring on a ratable basis for ratable service contracts (Rev. Proc. 2015-39). The IRS also indicated that additional safe harbors may be developed.

PLANNING NOTE. *This new safe harbor should prove useful immediately in year-end strategies taken by accrual-basis taxpayers that are currently negotiating contracts for regular services that extend into 2016. Done correctly to fit under the definition of ratable service contracts, a full deduction in the current 2015 tax year may be taken for certain 2015 payments, even for services not performed until 2016.*

Business Use of Vehicles

Several year-end strategies involving both business expense deductions for vehicles and the fringe-benefit use of vehicles by employees involve an awareness of certain rates and dollar caps that change annually. Changes affecting 2015, as well as some 2016 information, include:

Standard Mileage Rate. The standard business mileage allowance rate for 2015 is 57.5 cents-per-mile (up from 56 cents-per-mile for 2014).

Depreciation Limits. The IRS released the inflation-adjusted limitations on depreciation deductions for business-use passenger automobiles, light trucks, and vans first placed in service during calendar year 2015. The IRS also modified the 2014 first-year limitations by $8,000 to reflect passage of the *Tax Increase Prevention Act of 2014*, which retroactively extended bonus depreciation for 2014 late last year. It is uncertain whether anticipated 2015 extenders legislation will make the same retroactive adjustment for 2015.

PLANNING NOTE. *Code Sec. 280F(a) imposes dollar limitations on the depreciation deduction for the year the taxpayer places the vehicle in service in its business, and for each succeeding year.*

AFFORDABLE CARE ACT—BUSINESSES

PACE Act. In October 2015, Congress passed the *Protecting Affordable Coverage for Employees* (PACE) Act, which maintains the current language in the ACA that defines "small employer" as an employer with fewer than 50 full-time employees on average during the prior calendar year for purposes of the small group health market. The PACE Act, however, gives states the option to apply the original definition of small employer to employers with 51 to 100 employees for purposes of the small group health market. Employers should check state law.

PLANNING NOTE. *Only small employers can be qualified employers who may*

TRADITIONAL YEAR-END PLANNING TECHNIQUES

Traditional year-end planning techniques include:

Income Acceleration
(for postponement to 2016, delay the following actions):

- Sell outstanding installment contracts
- Receive bonuses before January
- Sell appreciated assets
- Redeem U.S. Savings Bonds
- Declare special dividend
- Complete Roth conversions
- Accelerate debt forgiveness income
- Maximize retirement distributions
- Accelerate billing and collections
- Avoid mandatory like-kind exchange treatment
- Take corporate liquidation distributions in 2015

Deductions/Credit Acceleration
(for deferral, take contrary actions):

- Bunch itemized deductions into 2015/Standard deduction into 2016
- Don't delay bill payments until 2016
- Pay last state estimated tax installment in 2015
- Don't delay economic performance
- Watch AGI limitations on deductions/credits
- Watch net investment interest restrictions
- Match passive activity income and losses

offer a cafeteria plan under Code Sec. 125 that permits their employees to enroll in a qualified health plan through the health insurance marketplace. The PACE Act may therefore have consequences for any large employers with between 51 and 100 employees that were planning to take advantage of this provision after they became "small employers" after January 1, 2016.

Health Reimbursement Arrangements. Many small businesses have traditionally provided a health benefit to their employees through a health reimbursement arrangement (HRA). Following passage of the ACA, the IRS released Notice 2013-54, which described these arrangements as employer payment plans. Therefore, they are considered to be group health plans subject to the ACA's market reforms, including the prohibition on annual limits for essential health benefits and the requirement to provide certain preventive care without cost sharing. Failure to comply with the ACA's market reforms triggers excise taxes under Code Sec. 4980D.

PLANNING NOTE. *The IRS provided transition relief (Notice 2015-17) from the excise taxes to qualified small employers but the relief expired after June 30, 2015. Bipartisan legislation has been introduced in the House and Senate (Small Business Health Care Relief Act, HR 2911; Sen. 1697) to provide permanent relief for small employers.*

Small Business Health Care Tax Credit. Small employers with no more than 25 full-time equivalent employees may qualify for a special tax credit to help offset the cost of health insurance for their employees. The employer must pay average annual wages of no more than $50,000 per employee (indexed for inflation) and maintain a qualifying health care insurance arrangement.

STRATEGY. *The small employer tax credit may be carried back or forward. Small businesses that do not owe tax may take advantage of the credit in a prior year or a future year, if eligible.*

FILING DEADLINE CHANGES

Due to changes in the tax laws and other events, some deadlines will be changing starting in 2016. As a result, planning at year-end 2015 might start factoring in some of these deadlines when setting out schedules and strategies at the start of 2016. Notably, under the *Surface Transportation Act of 2015* partnerships will be subject to an earlier March 15 deadline and C corporations generally will move to an April 15th deadline starting for 2016 tax year returns. Extensions-to-file are also adjusted.

Filing Deadline

A Washington, D.C. holiday, Emancipation Day, will shift the filing and payment deadline for 2015 individual returns from April 15, 2016 to April 18, 2016. Taxpayers in two states (Maine and Massachusetts) will have one additional day to file because of Patriots Day, which will be observed on April 18, 2016 in those states.

Delay of Estate Tax Uniform Basis Reporting

The IRS delayed new uniform basis reporting requirements for estate tax property until February 29, 2016. The delay was provided to give the IRS time to issue guidance to executors, beneficiaries, and others on how to comply with the new reporting requirements.

FBARs

The due date going forward for filers of FBAR (FinCEN Report 114) will shift from June 30 to April 15, applicable for FBARs for tax years beginning after December 31, 2015. The Surface Transportation Act also provides that any penalty for failure to timely request or file an extension may be waived for taxpayers required to file Report 114 for the first time. The IRS is also given authority to modify regulations to provide for a maximum extension of six months ending on October 15.

PLANNING NOTE. *Treasury's Financial Crimes Enforcement Network (FinCEN) again postponed the Report of Foreign Bank and Financial Accounts (FBAR) (FinCEN Form 1114) filing deadline for certain individuals with signature authority over but no financial interest in one or more foreign financial accounts to June 30, 2016.*

PLANNING NOTE: *2015 has been a successful year for Treasury Department efforts to gain international cooperation against unreported offshore accounts. The Foreign Account Tax Compliance Act of 2010 (FATCA), enables the IRS, under the threat of 30 percent withholding, the obtain information from foreign financial institutions on foreign accounts that have U.S. owners. On September 30, 2015, the IRS announced a milestone under FATCA, signaling an initial exchange of financial account information under the authority of intergovernmental agreements (IGAs) negotiated by Treasury with foreign jurisdictions. U.S. taxpayers holding foreign assets, whether individuals or businesses, need to reexamine their compliance as year-end approaches, particularly in light of stepped-up IRS enforcement.*

TOP TEN ISSUES FOR THE REST OF 2015

1. Timing and extent of an extenders package
2. Affordable Care Act
3. International tax compliance
4. Repair regulations
5. IRS operations
6. Net investment income (NII) tax
7. Retirement planning
8. Identity theft
9. Preparer oversight
10. Tax reform—the long view