Expanding Basis Consistency Reporting under the President's Revenue Proposals for 2017

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The Obama Administration recently released its budget proposals covering the 2017 fiscal year. Along with the Administration?s proposals, the Department of Treasury issued its **General Explanations of the Administration?s Fiscal Year 2017 Revenue Proposals**. As in the past, included in the Administration?s budget proposals and Treasury?s explanations are a number of measures specifically impacting estate, gift, and generation-skipping transfer (?GST?) taxes. Such proposals include:

- Restoring the estate, gift, and GST tax parameters from 2009, including a 45 percent top tax rate, an applicable exclusion amount of $3.5 million for estate and GST tax and $1 million for gifts;
- Expanding the requirements for consistent basis reporting as discussed in more detail below;
- Modifying transfer tax rules for GRATS and other Grantor trusts by, among other things, setting the minimum term for GRATS at 10 years;
- Limiting the duration of the GST tax exemption to 90 years;
- Extending the lien on estate tax deferrals on estates consisting largely of closely held business interests;
- Modifying GST tax treatment of Health and Education Exclusion Trusts (?HEETS?);
- Simplifying the gift tax exclusion for annual gifts by eliminating the present interest requirement for gifts that qualify for the gift tax annual exclusion; and
- Expanding the definition of an ?executor? to empower such representative to act on behalf of the decedent in all matters relating to the decedent?s tax liabilities, regardless of when those liabilities were incurred.

Most of these proposals are holdovers from prior years, with one important exception. That is, the Administration seeks to expand upon the recently enacted requirement of consistent basis reporting for estate and income taxes.

Requirement of Basis Consistency Reporting for Transfer and Income Tax Purposes

On July 31, 2015, the President signed into law the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 (P.L. 114-41). In short, this law imposes a new requirement that the executors of an estate and the beneficiaries who receive property from the estate each report the value of the property and the recipient?s basis in such property consistently for both estate and income tax purposes. To facilitate such reporting, the IRS created Form 8971, which is to be used by those required to file an estate tax return under §6018 of the Code. Greater detail regarding the specifics of this new reporting requirement can be found **here**.

In December 2015, the IRS issued a draft Form 8971. In late January of this year, a finalized version of Form 8971 and its accompanying instructions were released to the public. The finalized Form 8971 can be found **here**, and the instructions can be found **here**. Executors required to file an estate tax return under §6018 of the Code should timely file a completed Form 8971, separately from the estate tax return, and furnish a Schedule A of Form 8971 to each of the recipients of the estate?s property.

Expanding Requirement of Basis Consistency Reporting

The President seeks to expand the basis consistency requirements to include (1) estates that pay no estate tax because of the marital deduction but that still must file an estate tax return under §6018, and (2) property transferred by gift.

In its current form, the basis consistency provisions apply only to the particular items of property that generate a federal estate tax. This excludes property transferred by gift or property that qualifies for the estate tax marital deduction. The Administration and Treasury believe that excluding property that qualifies for the estate tax marital deduction from the consistent reporting requirement is significant because an unlimited amount of property may be excluded from a decedent?s estate under this deduction. They argue that the same discrepancies in property valuation for estate and income tax can continue to exist with respect to gifts and marital bequests under the current law.

Likewise, with respect to property passing by lifetime gift, the President and Treasury seem concerned that the new law fails to prevent different basis and valuation positions between a donor and donee with respect to the same gifted property. By expanding the law to cover property acquired by gift during life, the onus would be placed on the donor to ensure that the recipient receives the necessary information to accurately determine the recipient?s basis in the transferred property.

As is the case with many of the President?s revenue proposals, it is unclear whether the proposals specifically relating to the estate, gift, and GST taxes, including the expansion of basis consistency reporting requirements, will pass in this election year.

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