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“Build Back Better Plan”: Significant Tax Reform on the Horizon – Is Proactive Estate Planning Right For You?

November 3, 2021

On October 28, 2021, the House Ways and Means Committee issued a revamped proposal in furtherance of President Biden’s “Build Back Better Agenda.” The proposed legislation (the “Revised Proposal”) has been the subject of intensive negotiations since September 13, 2021, when the original proposal (“Original Proposal”) was advanced, and will still likely result in significant modifications prior to becoming law.

While the Original Proposal pointed to massive tax reform which would impact estate planning for millions of Americans, the Revised Proposal excludes those changes. Nevertheless, because changes could still be made as Congress wrangles the final legislative text, Cullen and Dykman feels it important that our clients are aware of the originally proposed changes and how those changes would impact the federal estate and gift tax exemption and grantor trusts.

Estate Tax Basic Exclusion Amount

The current 2021 gift and estate tax exclusion is $11,700,000. The Original Proposal would have terminated the temporary increase in the basic exclusion amount, returning that amount to $5,000,000, indexed for inflation. Under the Original Proposal, the basic exclusion amount starting on January 1, 2022 would be $6,030,000, and would likely apply to estates of decedents dying and gifts made after December 31, 2021. Again, this part of the Original Proposal was excluded from the Revised Proposal, but should be considered nonetheless.

Grantor Trusts

Currently, when a deemed owner of a grantor trust dies, the assets of that grantor trust are generally not included in the deemed owner’s estate for federal estate tax purposes, meaning that the trust is not subject to federal estate tax on the grantor’s death. The Original Proposal would have altered the use of grantor trusts in three major ways: (1) by requiring that assets in a grantor trust be included in the gross estate of the deceased deemed owner, with a credit adjustment to account for the use of the gift tax exemption when the gift to the trust was made; (2) by treating any distributions (other than to the deemed owner or spouse) during the life of the deemed owner and the termination of grantor trust status during the life of the deemed owner as completed gifts, triggering gift tax, subject to two limited exceptions; and (3) subjecting asset sales to the grantor trust by

the deemed owner to federal income tax in the same manner as if the deemed owner sold assets to a third party. Currently, grantors can sell appreciated assets to the grantor trust without recognizing taxable gain. Again, this part of the Original Proposal was not included in the Revised Proposal, but should not be overlooked considering that the legislation is not yet final.

Conclusion

Although the Revised Proposal advanced on October 28, 2021 excludes the aforesaid changes to estate and gift taxes and grantor trusts, the legislation is not yet final and revisions are likely to be made.

Cullen and Dykman LLP is committed to assisting our clients with their estate planning questions and concerns and we can help evaluate whether proactive planning is right for you. Please do not hesitate to contact our readily available Estate Planning team:

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Practices

- Estate Planning

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