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ACCOUNTANTS & ADVISORS

UNCERTAINTY OVER EXPIRED TAX BREAKS ONCE AGAIN COMPLICATES YEAR-END TAX PLANNING

Year-end tax planning this year will be just as complicated as it was last year due in a large part to uncertainty surrounding many expired tax breaks for individuals and businesses. Tax legislation signed into law last December extended several expired breaks, but only through the end of 2014.

While Congress considers passage of legislation to renew expiring tax provisions, it's difficult to predict the specific tax items that will be included in any final bill. Nevertheless, there are some year-end tax planning strategies that can be implemented now and do not need to wait for tax legislation to be signed into law. To the extent certain expired tax provisions are extended for 2015, be prepared and work with your tax advisor to modify year-end strategies and planning.

TRADITIONAL TAX PLANNING STRATEGIES FOR INDIVIDUALS

Individuals often can reduce their tax bills by managing the timing of income and deductions. For example, if deferring income provides the best tax result, your employer may determine that your year-end bonus was earned and should be paid in early 2016 rather than in 2015. Likewise, accelerating income might be advantageous particularly if your income will be subject to a higher tax rate in 2016.

Acceleration of deductions or pre-tax contributions is also an important year-end tax planning strategy. Strategies include paying certain property taxes or making charitable contributions before the end of the year, or increasing your IRA or qualified retirement plan contributions to the extent that they qualify as allowable deductions or are treated as pre-tax contributions in 2015. Certain qualified retirement plan contributions such as IRAs provide even greater flexibility because you can make 2015 contributions after the end of the year. Similarly, charitable contributions charged to your credit card in 2015 and paid with your credit card statement in 2016 will be treated as a charitable contribution for 2015.

It is important to note that consideration should also be given to deferring deductions in certain situations. If you are subject to the alternative minimum tax (AMT) or the limitation of itemized deductions due to income thresholds (Pease limitation), paying items such as state and local taxes or charitable donations in 2015 may not be beneficial.

You should work with your tax advisor now to strategize on the best course of action for deferring or

accelerating income, pre-tax items and deductions.

Other year-end tax planning strategies to consider include:

Offsetting capital gains. If you sold stocks or other investments at a gain this year — or plan to do so — consider offsetting those gains by selling some poorly performing investments at a loss. This so-called "loss harvesting" is an important year-end tax planning strategy that allows capital gain income to be offset dollar-for-dollar with capital losses. Excess capital loss up to $3000 may offset other income and any remainder is carried over into future years.

Reducing capital gains is particularly important if you are subject to the net investment income (NII) tax. This tax applies to taxpayers with modified adjusted gross income (MAGI) over $200,000 ($250,000 for married couples filing jointly). The tax on NII is an additional 3.8% tax on the *lesser* of 1) your net income from capital gains, dividends, taxable interest and certain other sources, or 2) the amount by which your MAGI exceeds the threshold. In addition to reducing your net investment income by generating capital losses to offset capital gains, you may have opportunities to bring your MAGI below the applicable NII threshold by deferring income or accelerating certain deductions.

Tax bracket management. The IRS publishes adjustments to a number of tax provisions including graduated individual income tax rates. For 2015, these adjustments and tables can be found in Revenue Procedure 2014-61.Depending on your taxable income and filing status, the rates in percentages are 10%, 15%, 25%, 28%, 33%, 35% and 39.6%. Long term capital gain and dividend rates have not changed and range from 0% (for those in the lowest income category) to 20% (for individuals in the highest marginal tax bracket). Short term capital gains enjoy no tax rate benefit and are taxed similar to ordinary income tax rates. If offsetting capital gains with losses is not available or insufficient, shifting income recognition among different tax years should be considered. The goal is to allocate as much income as possible to low bracket tax years. For example, if a loss in a tax year results in lower taxable income, acceleration of income during this same tax year may yield the greatest tax benefit. This may be an optimal time sell assets for a profit or to convert a traditional IRA into a Roth IRA, pay the conversion tax at ordinary rates, and enjoy tax-free distributions from the Roth IRA at retirement.

Charitable giving. If you plan to make charitable donations, consider donating highly appreciated stock or other assets rather than cash. This strategy is particularly effective if you do not have any losses to offset gains. Donating stock to charity allows you to dispose of the stock without triggering capital gains taxes, while still claiming a charitable deduction for the full value of the asset.

Monitoring expired tax breaks. Keep an eye on Congress. If certain expired tax breaks are extended before the end of the year, you may have some last-minute planning opportunities. Some of the popular expired provisions for individuals include tax-free IRA distributions to charity for taxpayers age 70½ and older, the deduction for state and local sales taxes, mortgage debt forgiveness exclusion, and the

above-the-line deduction for qualified tuition and related expenses.

Prepare for possible revival of expired business breaks

Year-end tax planning for businesses has become increasingly less certain because of expired tax breaks as well as an increased regulatory environment. The following business tax breaks were among those that expired on December 31, 2014:

Enhanced Section 179 expensing election. For tax years ending before 2015, Sec. 179 of the Internal Revenue Code permitted businesses to immediately deduct (rather than depreciate) up to $500,000 in qualifying expenditures related to new or used tangible property. These write-offs are valuable and include off-the-shelf computer software. The deduction was phased out, on a dollar-for-dollar basis, to the extent qualified asset purchases for the year exceeded $2 million. Because Congress failed to extend the enhanced election beyond 2014, these limits have dropped to $25,000 and $200,000, respectively.

50% bonus depreciation. Another expired tax provision is related to bonus depreciation. This provision allowed businesses to claim an additional first-year depreciation deduction equal to 50% of qualified asset costs. Bonus depreciation generally was available for new tangible assets with a recovery period of 20 years or less, as well as for off-the-shelf software. Currently, it's unavailable for 2015 (with limited exceptions).

Lawmakers may restore enhanced expensing and bonus depreciation retroactively, but the timing of any action is unclear. In the meantime, businesses should consider qualifying asset purchases in one or more of the following ways:

- If you need equipment or other assets to run your business, complete the acquisition regardless of the availability of tax breaks.
- For less urgent asset needs, consider spending up to $25,000 — the amount of an allowable expense regardless of whether Congress extends the expired breaks.
- For additional planned asset purchases, consider taking a wait-and-see approach and be prepared to act quickly if and when "tax extenders" legislation is signed into law.

Keep in mind that in order to take advantage of depreciation tax breaks on your 2015 tax return, the business must purchase and place the qualifying assets in service by the end of the 2015.

Other expired tax provisions. Other expired business tax provisions include the following:

- Research Tax Credit
- Work Opportunity Tax Credit

• New Markets Tax Credit
• Empowerment Zone incentives
• Wage credit for active military reservists
• Indian employment credit
• Low-income credit for new subsidized buildings and military housing
• Reduced S corporation built-in gain recognition period
• S corporation stock basis reduction for charitable donations
• Gain exclusion for sale of small business stock

FOLLOW TRADITIONAL YEAR-END STRATEGIES FOR BUSINESSES

Traditional year-end business planning strategies remain important, such as deferring income to 2016 and accelerating deductible expenses into 2015 to the extent permitted by law. For example, if your business uses the cash method of accounting, 2015 invoices that are paid in 2016 will not result in income recognition in 2015. Businesses should also consider accelerating deductions by paying certain expenses in advance.

If your business uses the accrual method of accounting, you may be able to defer the tax on certain advance payments you receive this year. You may also be able to deduct year-end bonuses accrued in 2015 even if not paid until 2016 (provided they are paid within 2½ months after the end of the tax year).

Deferring income and accelerating deductions may not be the best strategy in all circumstances. If you expect your business's marginal tax rate to be *higher* next year, it may be more beneficial to accelerate income into 2015 and deferring deductions until 2016. This strategy will likely increase your 2015 tax liability, but it can reduce your overall tax liability over a two-year period.

Finally, consider switching your tax accounting method from accrual to cash or vice versa if your business is eligible and such a change would provide tangible benefits. Other tax accounting method changes should also be considered if appropriate. Recent guidance published by the IRS provide important clarity and procedures with respect to several specific and overall accounting method changes can be found here.

Be mindful of the ACA's information reporting deadlines

Additional year-end planning also includes the upcoming deadline for the Affordable Care Act (ACA) information reporting provisions for applicable large employers (ALEs). ALEs — generally those with at least 50 full-time employees or the equivalent — must report to the IRS information regarding health care coverage, if any, offered to full-time employees.

The reporting deadline is February 28 (March 31, if filed electronically) of the year following the calendar

year to which the reporting relates. Smaller employers that are self-insured or part of a “controlled group” ALE will also have reporting obligations.

With the deadline approaching, now is the time for affected employers to begin assembling the necessary information. The compliance obligations will likely require a joint effort by the payroll, HR and benefits departments in order to collect all relevant data.

The IRS has developed new forms for ACA tax information reporting: Form 1094-C, “Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns” to furnish information to the IRS about the employer and Form 1095-C, “Employer-Provided Health Insurance Offer and Coverage” to be used to report information about each employee. Both forms are used to determine whether an employer owes a payment under the employer shared responsibility of the ACA. IRS instructions regarding these forms can be found here. Employers that offer employer-sponsored self-insured health coverage file Forms 1094-B and 1095-B.

Don’t let uncertainty paralyze your planning efforts

Expired or expiring tax breaks along with complex new tax compliance rules remains a thorny source of uncertainty that can negatively impact year-end tax planning for both individuals and businesses. Traditional tax planning and competent tax advice is essential as well as planning for the passage of tax extender legislation. Marks Paneth LLP can evaluate your entire financial situation, perform accurate modeling, provide compliance advice and guide you through the steps that must be taken before year end in order to take full advantage of tax benefits available (or possibly to be available) to you or your business.

FOR MORE INFORMATION

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