Anchin Alert

Anchin, Block & Anchin LLP
Accountants and Advisors

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IRS Proposed Regulations Target Gift and Estate Tax Planning Strategies

The IRS has released proposed regulations that would close so-called tax loopholes that many wealthy taxpayers have used to minimize transfer taxes (such as gift and estate taxes) when transferring interests in a closely held family business to relatives. If finalized, the regulations would significantly limit the benefit of certain tax-saving vehicles, including family limited partnerships, for reducing the taxable value of transferred interests. The regulations would apply to family-controlled corporations, partnerships and limited liability companies.

Valuation discounts narrowed

Among the changes proposed to limit discount availability are:

Applicable restrictions. Under the tax code, certain "applicable" restrictions on transferred interests in a family business — which would typically justify discounts in the value of those interests — are disregarded when valuing the interests for gift or estate tax purposes.

Disregarded restrictions. The proposed regulations also identify some additional restrictions that may reduce the transfer tax value of an interest in a family business despite not reducing the interest's value to the family member receiving it — and therefore that should be disregarded for transfer tax valuation purposes.

Insubstantial transfers to nonfamily members. The proposed regulations also tackle the treatment of the transfer of an interest in a family business to a nonfamily member. The IRS says that taxpayers have avoided the applicable restriction trap by transferring a nominal interest in their family business to a nonfamily member, such as a charity or an employee, to ensure that the family alone doesn't have the power to remove a restriction.

Act now

A public hearing on the proposed regulations has been scheduled for December 1, 2016, and the regulations won't take effect until at least 30 days after they're finalized.

If the regulations are approved as-is or in a modified format, they'll apply prospectively, so you still have a window to take advantage of the current regulations if you're considering transfers of interests in family businesses. Since the window of time is small we suggest you evaluate any potential transfers timely, in connection with your overall estate plan.

Contact your Anchin Relationship Partner to discuss how these changes might affect you and your business. Our Trusts and Estates team has a wide range of strategies to consider for your situation.

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