HOW THE 2024 ELECTIONS AND PROPOSED ESTATE TAX REFORMS COULD IMPACT ESTATE PLANNING STRATEGIES

The American Housing and Economic Mobility Act of 2024, supported by presidential candidate Kamala Harris, introduces a series of significant federal estate tax reforms. These changes aim to generate additional federal revenue, primarily to fund housing initiatives, while addressing economic inequality by imposing higher taxes on large estates. This white paper provides an in-depth analysis of the proposed estate tax reforms and their impact on current planning techniques.

I. Overview of the Proposed Estate Tax Reforms:

The estate tax proposals under the American Housing and Economic Mobility Act of 2024 represent a dramatic shift from current tax policies. The key elements of the reforms are as follows:

A. Progressive Estate Tax Rates: The Act proposes a tiered estate tax system with rates that increase based on the value of the estate:

1. 55% on estates valued up to $13 million.
2. 60% on estates valued between $13 million and $93 million.
3. 65% on estates exceeding $93 million.
4. A 10% surtax is proposed for estates valued over $1 billion.
5. Reduced Estate Tax Exemption: The current estate tax exemption stands at $13.61 million per individual (or $27.22 million for married couples). Under the proposed reforms, this exemption would be reduced to $3.5 million per individual ($7 million for married couples). This significant reduction would greatly increase the number of estates subject to federal estate taxes.

B. Gift and Generation-Skipping Transfer (GST) Tax Adjustments: The proposal also reduces the gift and GST tax exemptions to $3.5 million. Furthermore, the annual gift exclusion would be limited to $10,000 per recipient, with an overall cap of $20,000 per donor. These changes aim to curb the ability of wealthy individuals to transfer large amounts of wealth tax-free during their lifetimes.

C. **New Surtax on Estates and Trusts:** The Act introduces a new surtax on high-income estates and trusts, including:

1. A 5% tax on the portion of modified adjusted gross income for an estate or trust that exceeds $200,000.
2. An additional 3% tax on modified adjusted gross income for an estate or trust over $500,000.

II. Implications for Estate Planning:

These proposed changes would have significant implications for estate planning, particularly for high-net-worth individuals and families. Key considerations include:

A. Increased Tax Burden: The reduction in the estate tax exemption from $13.61 million to $3.5 million would subject many more estates to taxation. Additionally, the increased rates and surtaxes would substantially raise the tax liability for large estates, potentially leading to higher effective tax rates for the wealthiest estates.

B. Changes in Gift-Giving Strategies: The reduced gift tax exemption and the cap on annual gift exclusions would limit the ability to transfer wealth tax-free during one's lifetime. Estate planners would need to explore alternative strategies to mitigate the impact of these changes.

C. Impact on Trust Structures: The proposal includes measures to restrict the use of certain trust structures, such as irrevocable grantor trusts, which have traditionally been used to minimize estate tax liabilities. Estate planners may need to reconsider the use of these tools or explore new strategies to achieve their clients' goals.

D. Sunsetting of the Tax Cuts and Jobs Act: The current estate tax exemption levels, established by the 2017 Tax Cuts and Jobs Act (TCJA), are set to expire at the end of 2025, reverting to pre-TCJA levels. The proposals go even further, reducing the exemption below pre-TCJA levels and increasing tax rates, signaling a clear shift in federal tax policy.

E. Budget Reconciliation Process: Although the TCJA does not sunset until the end of 2025, if these proposals are enacted during 2025 as part of the Federal Budget Reconciliation process, they could be retroactive to January 1, 2025.

F. Clawback: Thus far there has been no mention of undoing the beneficial effect of estate planning completed prior to January 1, 2025.

III. Likelihood Of Passage:

The competing political parties have drastically different approaches to improving the economy and affecting social policy. For the above measures to become law, Vice President Harris would have to win the November 2024 presidential election and her party would need to achieve control of both Houses of Congress.

IV. Key Takeaway:

The estate tax proposals under the American Housing and Economic Mobility Act of 2024 could have significant implications for estate planning, charitable giving and financial strategies, particularly for high-net-worth individuals and families. The estate planning attorneys at Pannone Lopes Devereaux & O'Gara (PLDO) focus on staying ahead of proposed legislative changes that can significantly impact our clients. The best opportunity to mitigate the effect of these potential new laws to your estate is to act before the end of 2024. If you have questions or need assistance, please contact Gene M. Carlino at (401) 824-5138 | gmcarlino@pldolaw.com; Bernard A. Jackvony at (401) 824-5185 | bjackvony@pldolaw.com or Leah A. Foertsch at 561-362-2030 | lfoertsch@pldolaw.com.

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