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Updates from the 2023 Heckerling Institute on Estate Planning

February 10, 2023

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Learning
Objectives

Describe the Corporate Transparency Act

Identify new estate planning strategies & opportunities

Identify key developments and opportunities from SECURE 2.0 and Proposed Regulations under SECURE 1.0



Corporate Transparency Act - Overview

- Enacted January 1, 2021 as part of the National Defense Authorization Act, Final regulations released September 29, 2022, **effective date of January 1, 2024**
- Will be administered by FinCEN
- Purpose is to create a beneficial ownership registry (“BOSS”) for certain entities to combat money laundering, tax evasion, terrorism financing, etc.
- Registry will be available to certain law enforcement agencies, tax authorities, and upon request for limited other users
- Similar registries have been developed around the world



Corporate Transparency Act – Affected Entities

- Impacted entities “reporting companies” include:
 - Corporations (both C & S)
 - LLCs, LPs, LLPs
 - Foreign entities registered to do business in the United States
 - Similar entities that are created by filing a document with secretary of state or similar office
- Current exempted entities include:
 - Entities already under significant Federal regulation (banks, insurance companies, etc.)
 - Large operating company (U.S. presence, 20+ employees, over \$5 million gross receipts)
 - Charitable organizations
 - Trusts (not created by filing a document)



Corporate Transparency Act – Reporting Details

- Reporting company must:
 - Report its legal name, DBA name, address, state of formation, & taxpayer identification number
 - Report beneficial owners' legal name, birthdate, address, and ID number and image of identification document (passport, state ID, driver's license)
 - Provide same information for applicants when company is created on or after January 1, 2024
 - “FinCEN Identifier” can be obtained by an individual and used in place of above required information
 - Existing companies must file report by January 1, 2025, new companies have 30 days after creation
 - Any changes or corrections to filed information must be filed within 30 days



Corporate Transparency Act – Reporting Details (Cont'd) & Takeaways

- Beneficial owner is someone who:
 - Exercises substantial control over a reporting company (senior officers and those who can remove them, other individuals with substantial influence)
 - Owns or controls at least 25% of the reporting company
 - Exclusions include minors, agents, most employees, creditors, etc.
- Penalties for non-compliance:
 - \$500 each day the report is late (up to \$10k) and up to 2 years in prison
 - Similar consequences for anyone that provides false information to company or makes unauthorized disclosure of information about applicants or beneficial owners
- Takeaways:
 - Develop internal plan for compliance (if necessary) and/or inform clients of this
 - Monitor situation since there has been substantial pushback and could be changes



Sorensen Case

- Brother owners of Firehouse Subs
- Gifted stock with defined value of \$5 million on December 31, 2014 (reported on gift tax return)
- Sold about another \$3 million in shares on March 31, 2015 for promissory note (sale did not have defined value language and was not reported on gift tax return)
- IRS challenged gift on grounds of company reporting, no agreement with trusts, no acknowledgement from third party buyer, etc.
- Issues: 1) Defined value gifts 2) Valuation 3) Penalties
- Settlement highlights
 - Defined value formula did not apply
 - Valuation amount was settled closer to IRS's value
 - Penalties were imposed on the 2015 sale, but not the 2014 gift



Misc. Other Takeaways

- No changes to lifetime/estate exemption (currently \$12.92 million) earlier than the scheduled 2026 decrease
- For estate planning, try to focus on the beginning and less on the end
- Circumscribed GPOA
- State situs opportunities



SECURE Acts 2.0 and 1.0

SECURE 2.0

- In Continuing Resolution Bill signed by the President on 12/29/2022
- Move funds from a 529 College Savings Plan to a Roth IRA
- Qualified Charitable Distribution (QCD) amount increased for inflation
- QCD from an IRA to a Charitable Remainder Trust or Charitable Gift Annuity
- Reduced excise tax if fail to take Required Minimum Distributions (RMDs)
- Increased age for Required Beginning Date (RBD) for RMDs

SECURE 1.0 Developments

- SECURE enacted December 2019 & Proposed Regulations of February 2022
- Annual RMDs if decedent was past RBD & 10-year rule applies
- Testing a trust for retirement plan distributions



Tax-free Transfers from 529 Accounts to Roth IRAs

- For the 529 Plan beneficiary
- Direct trustee-to-trustee
- 529 account open >15 years
- \$35,000 lifetime maximum
- Limited to 5+ years' old 529 contributions and earnings
- Roth IRA annual limits apply
- Adjusted Gross Income (AGI) limit does not apply
- Effective for distributions after 12/31/2023
- IRC Sections 529(c)(3)(E) and 408A(e)(1)(C)
- Opportunity: Continued tax deferral and no tax if Roth distribution is after 5-year period and triggering event



Qualified Charitable Distribution Amount Indexed for Inflation

- \$100,000/yr per age 70 1/2 IRA owner or beneficiary
- Direct to public charities
- Not to donor-advised funds, supporting organizations, or most private foundations
- Need proper substantiation statement from charity at time of filing tax return
- Effective for distributions in taxable years beginning after 2023
- Rounding is to the nearest multiple of \$1,000.
- IRC Section 408(d)(8)(G)
- Opportunity: save income tax even if not itemizing; benefits of reduced AGI



QCD to Charitable Remainder Trust or Charitable Gift Annuity

- One-time election
- \$50,000 max, post-2023 indexed
- Charitable Remainder Annuity Trust (CRAT) or Charitable Remainder Unitrust (CRUT)
- Fixed, min 5% Charitable Gift Annuity (CGA) starts w/in 1 yr
- Income interest only for 70 ½ IRA owner, their spouse, or both; and must be non-assignable
- Funded directly & only via QCDs
- Effective for distributions in tax years beginning after 12/29/2022
- IRC Section 408(d)(8)(F)
- Opportunity: IRA owner or spouse can get cash flow during life with remainder passing to charity



Reduced excise tax for failure to take RMDs

- Reduced from 50% to 25%
- If timely correct, then 10%
- Correction window starts when tax is imposed & ends at the earliest of a) notice of deficiency, b) assessment of excise tax, or c) end of 2nd tax year after failure
- Must submit a return w/tax
- Effective for tax years beginning after 12/29/2022
- IRC Section 4974(a) and (e)
- Opportunity: less excise tax but will IRS still grant waivers?



Increased age for Required Beginning Date for RMDs

- RBD is 4/1 of year after reaching applicable age:
- 70 ½ if born pre-7/1/1949
- 72 if born 7/1/49-12/31/50
- 73 if born 1/1/51-12/31/59
- 75 if born 1/1/60 or later
- For QRP of a non 5% owner, 4/1 of year after the later of reaching the age or retiring
- Effective for distributions required to be made after 12/31/2022 with respect to individuals attaining age 72 after that date
- IRC Section 401(a)(9)(C)(v)
- Opportunity: more years for Roth conversions or non-RMDs to use lower brackets



Proposed Regulations under SECURE 1.0

- Annual RMDs from inherited account if post-2019 decedent died after RBD, even with 10-year rule
- Notice 2022-53: No excise tax for not taking these RMDs in 2021 or 2022. Unknown about catching up
- Age of majority = age 21
- IRC Section 401(a)(9)(B)(i)
- Prop. Reg. Sec. 1.401(a)(9)-5(d)(1)(i)
- Opportunity: plan for additional taxable income from annual RMDs during the 10-year period



Trust as beneficiary under SECURE 1.0 Prop. Regs.

- 4 Steps for testing a trust:
 - 1. Pass the 4 rules to be a see-through trust
 - 2. Make a list of all potential beneficiaries
 - 3. Divide that list into Tier 1 and Tier 2 beneficiaries
 - 4. Apply 10 disregard rules for countable beneficiaries
- Prop. Reg. Section 1.401(a)(9)-4(f)
- “Estate Planning for Retirement Benefits 2023 Under SECURE, Proposed Treasury Regulations” by Natalie Choate, on her website, ataxplan.com



Questions?



Thank you!

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