Opportunities in an Economy Shattered by Covid-19

The stock market has had record declines and many businesses are shuttered, at least temporarily. Long-term prospects may still be positive but in the near-term the value of many entities has reduced. Are there transactions that privately-held businesses and their owners could implement that would allow them to achieve long-term goals that could benefit the business, the owner, and owner's family? We believe that there are.

Taxpayers should investigate the implementation of an executive equity compensation program to reward key employees with equity compensation. Most equity compensation programs rely on equity grants based on the fair market value of the equity at the date of grant. Programs designed to be exempt from (or comply with) Internal Revenue Code section 409A in most cases require fair market value determinations of the equity of a business. Restricted equity programs, while not requiring grants based on fair market value, are most tax efficient if equity values are low. This is a critical factor in the design of equity compensation for many start-up businesses.

Taxpayers considering estate planning could also view the current market decline as an opportunity. The current law exemption of $11,580,000 per spouse declines to $5,000,000 (adjusted for inflation) in 2026. The current gift and estate tax maximum rate is 40%. A gift made today of an asset that in the past few months has declined in value by a very large percentage, and that might regain its prior value years down the road, would create a significant transfer tax (estate and gift) saving for the taxpayer. A well designed gift plan could achieve substantial savings for a taxpayer and his or her family.

These planning opportunities require close coordination between a taxpayer, legal counsel, the taxpayer's accountant, and a valuation advisor sensitive to these issues. Professional valuations are key to having an equity grant or current gift upheld on review by the IRS. The valuation firm needs to be able to rely on up to date financial information. Thus, the taxpayer's accountant will need to prepare financial statements for the most current periods possible. An April 30th gift or grant should be based on values determined with March 31 or later numbers.

These strategies may be one of the few positive developments for privately held companies in this time of economic upheaval.

As your legal counsel, we are available to discuss these strategies with you. Our Tax, Estate Planning and Benefits Group is available to address your concerns immediately. You can reach any of us at the contact information below or contact your Buchalter attorney:

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