

President's Capital Gains Tax at Death Proposal

Winter 2015

President Obama's 2015 State of the Union address focused on a number of tax proposals that would, if enacted, greatly affect high net worth families. One such proposal is the imposition of capital gains taxes on appreciated assets at death. Under current law, the basis of assets (which is used to compute capital gains and losses) is either "stepped-up" or "stepped-down" to the fair market value of the assets as of a decedent's date of death, and if there is post-death appreciation, the recipient of the assets does not pay any capital gains tax until the recipient disposes of the assets.

A White House fact sheet on the proposal describes the change as follows: "The President's proposal would close the stepped-up basis loophole by treating bequests and gifts other than to charitable organizations as realization events, like other cases where assets change hands."¹ For example, if a client had an asset with a \$1 million basis that had appreciated in value to \$20 million as of the client's date of death, the proposal could impose capital gains tax on the \$19 million of capital gain as if the asset had been sold. It is very unclear at this point how this proposal would intersect with the estate tax. This proposal also suggests that capital gains taxes would be payable upon a donor's gift of appreciated assets, but again the details have not yet been fleshed out. Thus, it is unclear at this point how this proposal would affect Grantor Retained Annuity Trusts, among other forms of wealth transfer planning.

Although the specifics of how this proposal would function are unclear, the White House fact sheet provides:

- No tax would be due for married couples until the death of the second spouse.
- There would be an exemption from capital gains of up to \$200,000 per married couple (\$100,000 per individual). This exemption would be automatically portable between spouses.
- Married couples would also have an additional \$500,000 exemption for personal residences (\$250,000 per individual), which again would be automatically portable between spouses.
- Tangible personal property other than expensive art and similar collectibles (e.g., bequests or gifts of clothing, furniture, and small family heirlooms) would be tax-exempt." It is unclear what would constitute "expensive art and similar collectibles."
- No tax would be due on inherited small, family-owned and operated businesses - unless and until the business was sold. Again, it is unclear what would constitute "inherited small, family-owned and operated businesses."
- Any closely-held business would have the option to pay tax on capital gains over fifteen years.

Although the President's proposal is not likely to pass in a Republican-led House and Senate, we will continue to monitor any developments. Should you have any questions about this proposal or other wealth transfer planning issues, please contact us.

¹ Office of the Press Secretary, The White House. "FACT SHEET: A Simpler, Fairer Tax Code That Responsibly Invests in Middle Class Families." Jan. 17, 2015. Available at <http://www.whitehouse.gov/the-press-office/2015/01/17/fact-sheet-simpler-fairer-tax-code-responsibly-invests-middle-class-fami>

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