Pre-IPO and Pre-M&A Checklist

Planning

As an entrepreneur preparing to expand or sell your business interests, there are common estate and income tax issues that should be addressed. Use this checklist as a starting point.

ESTATE PLANNING CONSIDERATIONS

Gift and Estate Tax Planning Basics

The federal estate and gift tax exemption allows each individual to transfer a portion of his or her wealth before the imposition of transfer tax. In 2025, this exemption is set at $13.99 million per person. This value is indexed for inflation, so it increases annually. A 40% tax is levied on any amount transferred above this exemption. If the majority of your net worth is locked up in your business, you might be forced to liquidate assets before you're ready in order to provide liquidity to pay taxes.

Pour-Over Wills

A pour-over will ensures that assets in your probate estate are transferred to your revocable living trust.

Revocable Living Trusts

A revocable living trust is a document used to administer your assets during your life and upon your death while avoiding probate and ensuring privacy. To ensure a tax-efficient transfer of your wealth, a revocable living trust may divide your assets into two or more shares upon death:

- **Credit Shelter Trust**
  A credit shelter trust is funded with assets equal in value to your unused estate and gift tax exemption. Since this share won't typically be subject to estate taxes again, the surviving spouse should turn to other assets to provide a lifetime benefit.
- **Qualified Terminable Interest Property (QTIP)**
  The QTIP trust is funded with all remaining assets. By making use of the marital deduction, estate taxes are deferred until the death of the surviving spouse while providing for such spouse's care during life.

Powers of Attorney

Powers of attorney for finances and health care ensure a smooth transition in the event you become incapacitated.

Separate Property Agreement

Execute a separate property agreement to characterize property as separate or marital and to provide a framework for acquiring property during marriage.

Irrevocable Life Insurance Trust

Create an irrevocable life insurance trust to own life insurance outside of your taxable estate. The death benefit proceeds create liquidity for expenses and estate taxes so your heirs do not have to sell closely held business interests.

6166 Election

If your business exceeds 35% of your estate, you may be able to spread the payment of estate tax over a period of 14 years.

Discounting

- **Family Limited Partnerships/Family LLCs**
  Provide for convenient family management, creditor protection, and valuation discounts by restricting the rights of limited partners/members.

Freezing

- **Grantor Retained Annuity Trust**
  Transfer the appreciation of growth assets out of your estate with minimal tax cost.
- **Qualified Personal Residence Trust**
  Transfer your home to a trust at a discount. Exclude growth in value of the home from your estate.

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Freezing (continued)

- **Intentionally Defective Grantor Trust**
  Transfer appreciating assets to a trust using a promissory note. Avoid recognizing gain and remove growth from your estate.
- **Beneficiary Defective Irrevocable Trust**
  Transfer appreciating assets to a trust using a promissory note. Continue to manage and benefit from assets during life while removing growth from your estate.

LIQUIDITY AND INCOME TAX ISSUES

Charitable Remainder Trusts

Defer capital gains on appreciated property while diversifying a concentrated position, obtaining a charitable deduction, and creating an income stream.

Wealth Replacement Trust

Use an irrevocable life insurance trust in combination with a charitable remainder trust to fund insurance premiums with appreciated property in a tax-efficient manner.

83(b) Election

Consider this option to tax restricted stock when it is initially granted and the value is lower. This helps to minimize income tax liability.

1202 Exclusion

You may be able to exclude from gross income a portion of the gain recognized when selling qualified small business stock that has been held at least five years.

Types of Stock Grants

When expanding or selling your business, you should be familiar with the tax treatment of the various stock grants you may choose to adopt.

- **Incentive Stock Options**
  These options allow you to recognize income upon the sale of stock rather than when the option is granted or exercised. The primary advantage of this type of option is that income may be taxed as a long-term capital gain. This income may be subject to alternative minimum tax.
- **Non-Qualified Stock Options**
  These options lack preferential tax treatment. Ordinary income is recognized on the difference between the strike price and the fair market value as of the date exercised. The income generated is also subject to payroll taxes.
- **Restricted Stock**
  With this type of stock grant, the difference between fair market value at vesting date and the amount paid for the grant is taxed as ordinary income. The income generated is also subject to payroll taxes.

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