

2015-2016



# Tax Planning Guide

Year-round strategies to make the tax laws work for you



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Dear Clients and Friends,

Year end planning will always be a center piece of tax planning, but we believe minimizing your tax liability takes more than just annual year end planning. The best opportunities to enhance your ability to save or defer taxes come when you understand the effect of transactions that can happen over multiple years and have the knowledge to incorporate current and anticipated future tax law changes into your current tax planning.

The enclosed tax planning guide is designed to help you understand the status of various current tax law provisions, along with suggested steps that can be taken to minimize your current tax liability. We encourage you to look through the guide for strategies that could benefit you.

This year, while there was no major piece of tax legislation, there were permanent changes to the tax law brought about through the Trade Preferences Extension Act of 2015, plus two other Trade Acts, and the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 (Highway Bill) that will need to be considered and are incorporated into the planning guide. In addition, delayed provisions of the Affordable Care Act will require defined large employers and certain self-insured businesses to expand health care coverage reporting to their employees and the Internal Revenue Service in the early part of 2016. The requirements in this delayed reporting will be more complex than previously thought and the time to assemble the information will cause concerns for many of the affected employers.

On December 19, 2014, the President signed tax extender legislation into law that was retroactive back to January 1, 2014. However, the signed legislation expired on December 31, 2014, just twelve days after it was signed and, as we provide this 2015 planning guide to you, Congress has not been able to send a 2015 extender bill to the President for signature. We know that many bills related to extender legislation have been introduced in the House of Representatives, some addressing the permanency of certain extender items. We also know that the Senate Finance Committee has passed legislation that extended more than 50 lapsed tax provisions from January 1, 2015 through December 31, 2016. And, even though nothing has yet been finalized, it is anticipated that Congress will finalize extender legislation for 2015 in the final months of the year, believed to be in line with the Senate Finance Committee term of two years through December 31, 2016, but the chances of any item gaining permanent status is fading. Therefore, factoring lapsed extenders into your 2015 tax planning is important, particularly based on the recent actions in Congress and past history of last minute extensions, but always with the understanding that there are no guarantees.

Our purpose is to serve you passionately and intelligently, utilizing our specialized knowledge to add a recognizable value to you and your business. We are committed to being available when you call and prepared to discuss tax planning strategies and the impact they will have on your personal situation.

Best regards,

*Harbin Ash CPAs, LLP*

# How to play — and win — the tax waiting game in 2015

**W**hen it comes to tax law, “uncertain” remains the watchword. Given the recent shift in power in Congress and the fact that the President is now in his last two years of office, there’s much talk of comprehensive, long-term tax reform — and speculation about its likelihood.

Then there are the tax “extenders.” Last December, in a dramatic rush to beat the clock, the Tax Increase Prevention Act of 2014 was signed into law. This measure retroactively extended a variety of tax relief provisions that had expired at the end of 2013. Unfortunately, the extensions were generally only through Dec. 31, 2014. Congress must take further action to revive the extenders for 2015 — or to make them permanent, perhaps as part of tax reform legislation.

Regardless of when — or if — either of those scenarios becomes reality, tax planning this year will be challenging. It’s possible we could reach the end of 2015 before knowing whether there will be comprehensive tax reform or whether the extender provisions will apply for the 2015 tax year. So be ready to revise your tax plan quickly. The more you know about the areas subject to change and possible tax-reduction strategies, the easier it will be to take action should the need arise.

This guide covers many of the tax issues higher-income taxpayers will encounter in 2015. However, there isn’t space to cover every possible tax-savings strategy here. So please contact your tax advisor to learn about specific strategies to address your situation.

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## Ordinary income: Getting the timing right

**B**ecause of the higher tax rates that apply to “ordinary income,” you need to be particularly careful in your planning. Ordinary income generally includes salary, income from self-employment or business activities, interest, and distributions from tax-deferred retirement accounts. Some of it may also be subject to employment tax, or you may have to pay the AMT, under which different tax rates apply. If possible, try to control to your tax advantage the timing of your ordinary income as well as your deductible expenses. *When* you receive income or incur an expense can affect how much tax you pay and when you have to pay it.

### AMT triggers

The top alternative minimum tax (AMT) rate is 28%, compared to the top regular ordinary-income tax rate of 39.6%. (See Chart 7 on page 24.) But the AMT rate typically applies to a higher taxable income base.

So before taking action to time income and expenses, you should determine whether you’re already likely to be subject to the AMT — or whether the actions you’re considering might trigger it. Many deductions used to calculate regular tax aren’t allowed under the AMT (see Chart 1) and thus can trigger AMT liability. Some income items also might trigger or increase AMT liability:

- Long-term capital gains and dividend income, even though they’re taxed at the same rate for both regular tax and AMT purposes,
- Accelerated depreciation adjustments and related gain or loss differences when assets are sold, and
- Tax-exempt interest on certain private-activity municipal bonds. (For an exception, see the AMT Alert on page 11.)

Finally, in certain situations exercising incentive stock options (ISOs) can trigger significant AMT liability. (See the AMT Alert on page 7.)



### Avoiding or reducing AMT

With proper planning, you may be able to avoid the AMT, reduce its impact or even take advantage of its lower maximum rate. To determine the right timing strategies for your situation, work with your tax advisor to assess whether:

#### **You could be subject to the AMT *this* year.**

Consider accelerating income into this year, which may allow you to benefit from the lower maximum AMT rate. And deferring expenses you can’t deduct for AMT purposes may allow you to preserve those deductions. If you also defer expenses you *can* deduct for AMT purposes, the deductions may become more valuable because of the higher maximum regular tax rate. Finally, carefully consider the tax consequences of exercising ISOs.

#### **You could be subject to the AMT *next* year.**

Consider taking the opposite approach. For instance, defer income to next year, because you’ll likely pay a relatively lower AMT rate. And prepay expenses that will be deductible this year but that won’t help you next year because they’re not deductible for AMT purposes. Also, before year end consider selling any private-activity municipal bonds whose interest could be subject to the AMT.

If you pay AMT in one year on deferral items, such as depreciation adjustments, passive activity adjustments or the tax preference on ISO exercises, you may be entitled to a credit in a subsequent year. In effect, this takes into account timing differences that reverse in later years.

### Timing income and expenses

Smart timing of income and expenses can reduce your tax liability, and poor timing can unnecessarily increase it. When you don’t expect to be subject to the AMT in the current year or the next year, deferring income to the next year and accelerating deductible expenses into the current year may be a good idea. Why? Because it will defer tax, which usually is beneficial.

But when you expect to be in a *higher* tax bracket next year — or you expect tax rates to go up — the opposite approach may be beneficial: Accelerating income will allow more income to be taxed at your current year’s lower rate. And deferring expenses will make the deductions more valuable, because deductions save more tax when you’re subject to a higher tax rate.

**Warning:** The impact of the income-based itemized deduction reduction (see page 4) also should be taken into account when considering timing strategies.

Whatever the reason behind your desire to time income and expenses, here are some income items whose timing you may be able to control:

- Bonuses,
- Consulting or other self-employment income,
- U.S. Treasury bill income, and
- Retirement plan distributions, to the extent they won't be subject to early-withdrawal penalties and aren't required. (See page 21.)

And here are some potentially controllable expenses:

- State and local income taxes,
- Property taxes,
- Mortgage interest,
- Margin interest, and
- Charitable contributions.

**Warning:** Prepaid expenses can generally be deducted only in the year to

which they apply. For example, you can prepay (by Dec. 31) property taxes that relate to this year but that are due next year, and deduct the payment on your return for this year. But you generally can't prepay property taxes that relate to next year and deduct the payment on this year's return.

### Miscellaneous itemized deductions

Many expenses that may qualify as miscellaneous itemized deductions are deductible for regular tax purposes only to the extent they exceed, in aggregate, 2% of your adjusted gross income (AGI). "Bunching" these expenses into a single year may allow you to exceed this "floor."

As the year progresses, record your potential deductions to date. If they're close to — or they already exceed — the 2% floor, consider paying accrued expenses and incurring and paying additional expenses by Dec. 31, such as:

- Deductible investment expenses, including advisory fees, custodial fees and publications,

- Professional fees, such as tax planning and preparation, accounting, and certain legal fees, and
- Unreimbursed employee business expenses, including vehicle costs, travel, and allowable meals and entertainment.

**AMT ALERT!** *Miscellaneous itemized deductions subject to the 2% floor aren't deductible for AMT purposes. So don't bunch them into a year when you may be subject to the AMT.*

### Health-care-related breaks

If your medical expenses exceed 10% of your AGI, you can deduct the excess amount. Eligible expenses may include:

- Health insurance premiums,
- Long-term care insurance premiums (limits apply),
- Medical and dental services,
- Prescription drugs, and
- Mileage (23 cents per mile driven for health care purposes in 2015).

Consider bunching nonurgent medical procedures (and any other services and purchases whose timing you can control without negatively affecting your or your family's health) into one year if you can exceed the 10% floor. (See Case Study I on page 4.) Taxpayers age 65 and older enjoy a 7.5% floor through 2016 for regular tax purposes but are subject to the 10% floor now for AMT purposes.

Expenses that are reimbursable by insurance or paid through a tax-advantaged account such as the following aren't deductible:

**HSA.** If you're covered by qualified high-deductible health insurance, you can contribute pretax income to an employer-sponsored Health Savings Account — or make deductible contributions to an HSA you set up yourself — up to \$3,350 for self-only coverage and \$6,650 for family coverage for 2015. Plus, if you're age 55 or older, you may contribute an additional \$1,000. HSAs can bear interest or be invested, growing tax-deferred similar to an IRA. Withdrawals for qualified medical expenses are tax-free, and you can carry over a balance from year to year.

CHART 1

### What itemized deductions are also deductible for AMT purposes?

Expense	Regular tax	AMT	For more information
State and local income tax	✓		See "Timing income and expenses" on page 2 and "Sales tax deduction" on page 4.
Property tax	✓		See "Home-related deductions" on page 12.
Mortgage interest	✓	✓	See "Home-related deductions" on page 12.
Interest on home equity debt not used to improve your principal residence	✓		See "Home-related deductions" on page 12.
Investment interest	✓	✓	See "Investment interest expense" on page 11.
Investment expenses	✓		See "Miscellaneous itemized deductions" above.
Professional fees	✓		See "Miscellaneous itemized deductions" above.
Unreimbursed employee business expenses	✓		See "Miscellaneous itemized deductions" above.
Medical expenses	✓	✓	See "Health-care-related breaks" at right.
Charitable contributions	✓	✓	See page 16.

## Bunching medical expenses to save taxes



2015 has been a tough year for Justin and Stephanie. The married couple's business has been struggling, so they project their income will be lower than usual. And Stephanie suffered a skiing injury in January that caused their medical expenses to be much higher than normal.

Despite the fact that their health policy coverage is somewhat limited and they don't have dental or vision insurance, the couple normally doesn't have sufficient medical expenses to exceed the 10% of AGI floor. But it's looking like they'll exceed it this year.

Fortunately, their prospects are much brighter for 2016: The couple's business is starting to show signs of a turnaround, Stephanie's injury is healing well and the biggest medical expense they anticipate next year is elective surgery for Justin that will be mostly covered by insurance. The downside of this potential prosperity is that there's a good chance the couple won't exceed the medical expense deduction AGI floor in 2016.

So, Justin and Stephanie decide to accelerate what medical expenses they can into 2015 to take advantage of the deduction:

Justin schedules his surgery for late 2015 instead of early 2016.	\$ 9,000
Justin and Stephanie undergo eye exams and get new glasses and contact lenses in 2015, which they otherwise would have done in 2016.	2,000
They move their normal January dentist appointments to December. Justin also has some follow-up dental work done.	<u>3,000</u>
<b>Total additional deduction</b>	<b>\$ 14,000</b>
Federal tax rate	35%
<b>Tax savings</b>	<b>\$ 4,900</b>

**FSA.** You can redirect pretax income to an employer-sponsored Flexible Spending Account up to an employer-determined limit — not to exceed \$2,550 in 2015. The plan pays or reimburses you for qualified medical expenses. What you don't use by the plan year's end, you generally lose — though your plan might allow you to roll over up to \$500 to the next year. Or it might give you a 2½-month grace period to incur expenses to use up

the previous year's contribution. If you have an HSA, your FSA is limited to funding certain "permitted" expenses.

### Sales tax deduction

The break allowing you to take an itemized deduction for state and local sales taxes in lieu of state and local income taxes was available for 2014 but, as of this writing, hasn't been extended for 2015. (Check with your tax advisor for the latest information.)

## Limit on itemized deductions

If your AGI exceeds the applicable threshold, certain deductions are reduced by 3% of the AGI amount that exceeds the threshold (not to exceed 80% of otherwise allowable deductions). For 2015, the thresholds are \$258,250 (single), \$284,050 (head of household), \$309,900 (married filing jointly) and \$154,950 (married filing separately).

If your AGI is close to the threshold, AGI-reduction strategies (such as making retirement plan and HSA contributions) may allow you to stay under it. If that's not possible, consider the reduced tax benefit of the affected deductions before implementing strategies to accelerate or defer deductible expenses. The limitation doesn't apply, however, to deductions for medical expenses, investment interest, or casualty, theft or wagering losses.

## Employment taxes

In addition to income tax, you must pay Social Security and Medicare taxes on earned income, such as salary and bonuses. The 12.4% Social Security tax applies only up to the Social Security wage base of \$118,500 for 2015. All earned income is subject to the 2.9% Medicare tax. Both taxes are split equally between the employee and the employer.

## Self-employment taxes

If you're self-employed, you pay both the employee and employer portions of employment taxes on your self-employment income. The employer portion (6.2% for Social Security tax and 1.45% for Medicare tax) is deductible above the line.

As a self-employed taxpayer, you may benefit from other above-the-line deductions as well. You can deduct 100% of health insurance costs for yourself, your spouse and your dependents, up to your net self-employment income. You also can deduct contributions to a retirement plan and, if you're eligible, an HSA for yourself. Above-the-line deductions are particularly valuable because they reduce your AGI and modified AGI (MAGI), which are the triggers for certain additional taxes and the phaseouts of many tax breaks.

## Additional 0.9% Medicare tax

Another employment tax that higher-income taxpayers must be aware of is the additional 0.9% Medicare tax. Under the Affordable Care Act, since 2013, taxpayers have had to pay this tax on FICA wages and net self-employment income exceeding \$200,000 per year (\$250,000 for married filing jointly and \$125,000 for married filing separately).

If your wages or self-employment income varies significantly from year to year or you're close to the threshold for triggering the additional Medicare tax, income timing strategies may help you avoid or minimize it. For example, if you're an employee, perhaps you can time when you receive a bonus, or you can defer or accelerate the exercise of stock options. If you're self-employed, you may have flexibility on when you purchase new equipment or invoice customers. If you're a shareholder-employee of an S corporation, you might save tax by adjusting how much you receive as salary vs. distributions. (See "Owner-employees" at right.)

Also consider the withholding rules. Employers must withhold the additional tax beginning in the pay period when wages exceed \$200,000 for the calendar year — without regard to an employee's filing status or income from other sources. So your employer might withhold the tax even if you aren't liable for it — or it might *not* withhold the tax even though you *are* liable for it.

If you *don't* owe the tax but your employer *is* withholding it, you can claim a credit on your 2015 income

tax return. If you *do* owe the tax but your employer *isn't* withholding it, consider filing a W-4 form to request additional *income* tax withholding, which can be used to cover the shortfall and avoid interest and penalties. Or you can make estimated tax payments.

## Owner-employees

There are special considerations if you're a business owner who also works in the business, depending on its structure:

**Partnerships and limited liability companies.** Generally, all trade or business income that flows through to you for income tax purposes is subject to self-employment taxes — even if the income isn't distributed to you. But such income may not be subject to self-employment taxes if you're a limited partner or the LLC member equivalent. Check with your tax advisor on whether the additional 0.9% Medicare tax on earned income or the new 3.8% NIIT (see page 8) will apply.

**S corporations.** Only income you receive as salary is subject to employment taxes and, if applicable, the 0.9% Medicare tax. To reduce these taxes, you may want to keep your salary relatively — but not unreasonably — low and increase your distributions of company income, because distributions generally aren't taxed at the corporate level or subject to the 0.9% Medicare tax or 3.8% NIIT.

**C corporations.** Only income you receive as salary is subject to employment taxes and, if applicable, the 0.9% Medicare tax. Nevertheless,

you may prefer to take more income as salary (which is deductible at the corporate level) as opposed to dividends (which aren't deductible at the corporate level yet are still taxed at the shareholder level and could be subject to the 3.8% NIIT) if the overall tax paid by both the corporation and you would be less.

**Warning:** The IRS is cracking down on misclassification of corporate payments to shareholder-employees, so tread carefully.

## Estimated payments and withholding

You can be subject to penalties if you don't pay enough tax during the year through estimated tax payments and withholding. Here are some strategies to help avoid underpayment penalties:

### Know the minimum payment rules.

For you to avoid penalties, your estimated payments and withholding must equal at least 90% of your tax liability for 2015 or 110% of your 2014 tax (100% if your 2014 AGI was \$150,000 or less or, if married filing separately, \$75,000 or less).

### Use the annualized income installment method.

This method often benefits taxpayers who have large variability in income from month to month due to bonuses, investment gains and losses, or seasonal income (at least if it's skewed toward the end of the year). Annualizing computes the tax due based on income, gains, losses and deductions through each estimated tax period.

### Estimate your tax liability and increase withholding.

If you determine you've underpaid, consider having the tax shortfall withheld from your salary or year end bonus by Dec. 31. Because withholding is considered to have been paid ratably throughout the year, this is often a better strategy than making up the difference with an increased quarterly tax payment, which may still leave you exposed to penalties for earlier quarters.

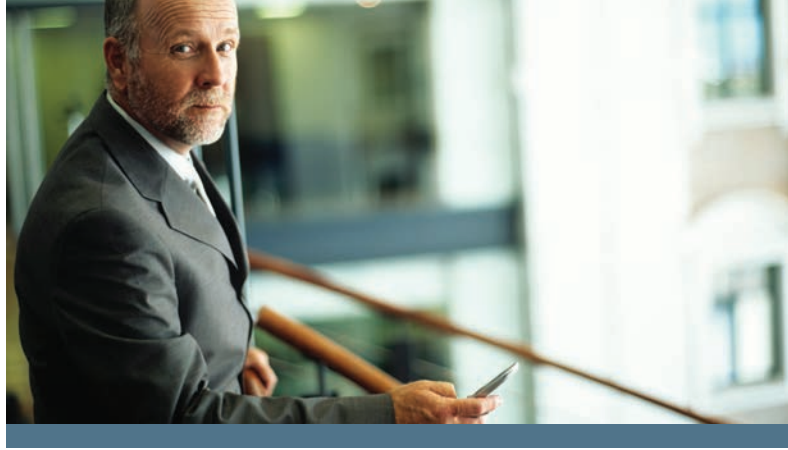
**Warning:** You can incur interest and penalties if you're subject to the additional 0.9% Medicare tax and it isn't withheld from your pay and you don't make sufficient estimated tax payments. ❖

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**What you need to consider when setting your salary if you're a corporate owner-employee:**

- **Responsibilities, hours worked and the value you bring to the business (such as reputation and customer relationships).**
  - **What other companies in the industry, in the geographic region and of similar size pay.**
  - **Company size as measured by sales, net income or capital value; the complexities involved in running it; and general economic conditions.**
  - **Consistency of salary from year to year and in relation to employee pay.**
- 





## Smart tax planning for your exec comp package is critical

Compensation may take several forms, including salary, fringe benefits and bonuses. If you're an executive or other key employee, stock-based compensation, such as restricted stock, restricted stock units (RSUs) or stock options (either incentive or nonqualified), and nonqualified deferred compensation (NQDC) may also be included in your exec comp package. The tax consequences of these types of compensation can be complex — subject to ordinary income, capital gains, employment and other taxes. So smart tax planning is critical.

### Restricted stock

Restricted stock is stock that's granted subject to a substantial risk of forfeiture. Income recognition is normally deferred until the stock is no longer subject to that risk or you sell it. When the restriction lapses, you pay taxes on the stock's fair market value (FMV) at your ordinary-income rate. (The FMV will be considered FICA income, so it also could trigger or increase your exposure to the additional 0.9% Medicare tax. See page 5.)

But you can instead make a Section 83(b) election to recognize ordinary income when you *receive* the stock. This election, which you must make within 30 days after receiving the stock, can be beneficial if the income at the grant date is negligible or the stock is likely to appreciate significantly before income would otherwise be recognized. Why? Because the election allows you to convert future appreciation from ordinary income to long-term capital gains income and defer it until the stock is sold. See Case Study II for an example of how powerful the election can be.

There are some potential disadvantages of a Sec. 83(b) election, however. First, you must prepay tax in the current year — which also could push you into a higher income tax bracket and trigger or increase your exposure to the

additional 0.9% Medicare tax. But if your company is in the earlier stages of development, the income recognized may be relatively small.

Second, any taxes you pay because of the election can't be refunded if you eventually forfeit the stock or you sell it at a decreased value. However, you'd have a capital loss when you forfeited or sold the stock.

Third, when you sell the shares, any gain will be included in net investment income and could trigger or increase your liability for the 3.8% NIIT. (See page 8.)

Work with your tax advisor to map out whether the Sec. 83(b) election is appropriate for you in each particular situation.

### RSUs

RSUs are contractual rights to receive stock (or its cash value) after the award has vested. Unlike restricted stock, RSUs aren't eligible for the Sec. 83(b) election. So there's no opportunity to convert ordinary income into capital gains.

But they do offer a limited ability to defer income taxes: Unlike restricted stock, which becomes taxable immediately upon vesting, RSUs aren't taxable until the employee actually receives the

stock. So rather than having the stock delivered immediately upon vesting, you may be able to arrange with your employer to delay delivery.

This will defer income tax and may allow you to reduce or avoid exposure to the additional 0.9% Medicare tax (because the RSUs are treated as FICA income). However, any income deferral must satisfy the strict requirements of Internal Revenue Code (IRC) Section 409A.

### Incentive stock options

ISOs allow you to buy company stock in the future (but before a set expiration date) at a fixed price equal to or greater than the stock's FMV at the date of the grant. Therefore, ISOs don't provide a benefit until the stock appreciates in value. If it does, you can buy shares at a price *below* what they're then trading for, as long as you've satisfied the applicable ISO holding periods.

ISOs receive tax-favored treatment but must comply with many rules. Here are the key tax consequences:

- You owe no tax when ISOs are granted.
- You owe no regular income tax when you exercise the ISOs.
- If you sell the stock *after* holding the shares at least one year from the exercise date and two years from the grant date, you pay tax on the sale at your long-term capital gains rate. You also may owe the NIIT. (See page 8.)
- If you sell the stock *before* long-term capital gains treatment applies, a “disqualifying disposition” occurs and



any gain is taxed as compensation at ordinary-income rates. (Disqualified dispositions aren't, however, subject to the additional 0.9% Medicare tax.)

**AMT ALERT!** *If you don't sell the stock in the year of exercise, a tax "preference" item is created for the difference between the stock's FMV and the exercise price (the "bargain element") that can trigger the AMT. A future AMT credit, however, should mitigate this AMT hit. Consult your tax advisor because the rules are complex.*

If you've received ISOs, plan carefully when to exercise them and whether to immediately sell shares received from an exercise or to hold them. Waiting to exercise ISOs until just before the expiration date (when the stock value may be the highest, assuming the stock is appreciating) and holding

on to the stock long enough to garner long-term capital gains treatment often is beneficial. But there's also market risk to consider. Plus, acting earlier can be advantageous in several situations:

- Exercise early to start the holding period so you can sell and receive long-term capital gains treatment sooner.
- Exercise when the bargain element is small or when the market price is close to bottoming out to reduce or eliminate AMT liability.
- Exercise annually so you can buy only the number of shares that will achieve a breakeven point between the AMT and regular tax and thereby incur no additional tax.
- Sell in a disqualifying disposition and pay the higher ordinary-income rate to avoid the AMT on potentially disappearing appreciation.

On the negative side, exercising early accelerates the need for funds to buy the stock, exposes you to a loss if the shares' value drops below your exercise cost, and may create a tax cost if the preference item from the exercise generates an AMT liability.

The timing of ISO exercises could also positively or negatively affect your liability for the higher ordinary-income tax rates, the 20% long-term capital gains rate and the NIIT. With your tax advisor, evaluate the risks and crunch the numbers to determine the best strategy for you.

### Nonqualified stock options

The tax treatment of NQSOs is different from the tax treatment of ISOs: NQSOs create compensation income (taxed at ordinary-income rates) on the bargain element when exercised (regardless of whether the stock is held or sold immediately), but they don't create an AMT preference item.

You may need to make estimated tax payments or increase withholding to fully cover the tax on the exercise. Keep in mind that an exercise could trigger or increase exposure to top tax rates, the additional 0.9% Medicare tax and the NIIT.

### NQDC plans

These plans pay executives in the future for services to be currently performed. They differ from qualified plans, such as 401(k)s, in several ways. For example, unlike 401(k) plans, NQDC plans can favor highly compensated employees, but plan funding isn't protected from the employer's creditors. (For more on 401(k)s, see page 20.)

One important NQDC tax issue is that employment taxes (see page 4) are generally due once services have been performed and there's no longer a substantial risk of forfeiture — even though compensation may not be paid or recognized for income tax purposes until much later. So your employer may withhold your portion of the employment taxes from your salary or ask you to write a check for the liability. Or it may pay your portion, in which case you'll have additional taxable income. **Warning:** The additional 0.9% Medicare tax could also apply. ❖

#### Case Study II

### Saving taxes on restricted stock with a Sec. 83(b) election

Marshall and Max are executives at a technology company, and in the same year each receives 50,000 shares of restricted stock with a fair market value of \$1 per share. Marshall doesn't make a Section 83(b) election, but Max does.

In an initial public offering (IPO) a year later, the stock is offered at \$5 per share. More than a year after the IPO, the market price reaches \$10 per share and Marshall and Max both sell all their shares. By making the Sec. 83(b) election, Max has saved \$31,600 in federal income taxes!

	Marshall (doesn't make the election)	Max (does make the election)
<b>Year the restricted stock is awarded</b>	Recognizes no income related to the stock.	Recognizes \$50,000 (50,000 shares at \$1 per share) of compensation income, for a federal income tax bill of \$19,800.
<b>Year of the IPO (which lifts the substantial risk of forfeiture)</b>	Recognizes compensation income of \$250,000 (50,000 shares at the IPO price of \$5 per share), for a federal income tax bill of \$99,000.	Recognizes no income related to the stock.
<b>Year of the stock sale</b>	Recognizes a long-term capital gain of \$250,000 (50,000 shares at \$10 per share less basis of \$5 per share), for a federal income tax bill of \$59,500.	Recognizes a long-term capital gain of \$450,000 (50,000 shares at \$10 per share less basis of \$1 per share), for a federal income tax bill of \$107,100.
<b>Total federal income tax paid</b>	\$158,500	\$126,900
<b>Note:</b> The figures presume that the 39.6% marginal income tax rate, the 20% long-term capital gains tax rate and the 3.8% NIIT apply.		

#### What you need to know about Sec. 409A if you receive NQDC:

- It generally requires you to elect to defer compensation the year before you earn it.
- It substantially restricts a company's ability to change the timing or form of payment.
- Failure to comply puts you at risk of being taxed for all future benefits before the benefits are received, plus a 20% penalty tax and interest.



## Keep taxes from chipping away at investment returns

**T**ax treatment of your investments varies dramatically based on such factors as type of investment, type of income it produces, how long you've held it and whether any special limitations or breaks apply. The relatively new 3.8% net investment income tax (NIIT) only makes planning for tax consequences that much harder. Of course, taxes should never be the primary driver of your investment decisions. But an increasingly complex tax code (and uncertainty over how possible tax reform legislation might change rates) makes buying and selling securities ever more challenging.

### 3.8% NIIT

Taxpayers with modified adjusted gross income (MAGI) over \$200,000 per year (\$250,000 for joint filers and \$125,000 for married filing separately) may owe the NIIT on top of whatever other tax they owe on their investment income. The NIIT, which went into effect in 2013, equals 3.8% of the lesser of your net investment income or the amount by which your MAGI exceeds the applicable threshold. Net investment income can include capital gains, dividends, interest and other investment-related income. The rules are somewhat complex, so consult your tax advisor for more information.

Many of the strategies that can help you save or defer income tax on your investments can also help you avoid or defer NIIT liability. And because the threshold for the NIIT is based on MAGI, strategies that reduce your MAGI — such as making retirement plan contributions (see page 20) — could also help you avoid or reduce NIIT liability.

### Capital gains tax and timing

Although time, not timing, is generally the key to long-term investment success, timing can have a dramatic impact on the tax consequences of investment activities. Your long-term capital gains

rate might be as much as 20 percentage points lower than your ordinary-income rate. The long-term gains rate applies to investments held for more than 12 months. The applicable rate depends on your income level and the type of asset you've sold. (See Chart 2 on page 10.)

Holding on to an investment until you've owned it more than a year may help substantially cut tax on any gain.

Remember: Appreciating investments that don't generate current income aren't taxed until sold, deferring tax and perhaps allowing you to time the sale to your tax advantage — such as in a year when you have capital losses to absorb the capital gain. Or, if you've cashed in some big gains during the year and want to reduce your 2015 tax liability, before year end look for unrealized losses in your portfolio and consider selling them

#### Case Study III

### How to qualify for the 0% capital gains rate



Faced with a long-term capital gains tax rate of 23.8% (20% for the top tax bracket, plus the 3.8% NIIT), Miguel and Pilar decide to transfer some appreciated stock to their adult daughter Gabby. Just out of college and making only enough from her entry-level job to leave her with \$25,000 in taxable income, Gabby falls into the 15% income tax bracket. This means she qualifies for the 0% capital gains rate.

However, the 0% rate applies only to the extent that capital gains “fill up” the gap between Gabby's taxable income and the top end of the 15% bracket. In 2015, the 15% bracket for singles tops out at \$37,450. So if Gabby has capital gains that push her income above that level, the excess gains will be taxed at a 15% rate.

When she sells the stock her parents transferred to her, Gabby's capital gains are \$20,000. Of that amount \$12,450 qualifies for the 0% rate and the remaining \$7,550 will be taxed at 15%. In the end, Gabby pays only \$1,132.50 vs. the \$4,760 Miguel and Pilar would have owed had they sold the stock themselves.

to offset your gains. Both long- and short-term gains and losses can offset one another.

**AMT ALERT!** Substantial net long-term capital gains can trigger the AMT.

### Wash sale rule

If you want to achieve a tax loss with minimal change in your portfolio's asset allocation, keep in mind the wash sale rule. It prevents you from taking a loss on a security if you buy a substantially identical security (or an option to buy such a security) within 30 days before or after you sell the security that created the loss. You can then recognize the loss only when you sell the replacement security.

Fortunately, there are ways to avoid the wash sale rule and still achieve your goals. For example, you can:

- Immediately buy securities of a different company in the same industry or shares in a mutual fund that holds securities much like the ones you sold,
- Wait 31 days to repurchase the same security, or
- Before selling the security, purchase additional shares of that security equal to the number you want to sell at a loss, and then wait 31 days to sell the original portion.

Alternatively, you can do a bond swap, where you sell a bond, take a loss and then immediately buy another bond of similar quality and duration from a different issuer. Generally, the wash sale rule doesn't apply because the bonds aren't considered substantially identical. Thus, you can achieve a tax loss with virtually no change in economic position.

### Loss carryovers

If net losses exceed net gains, you can deduct only \$3,000 (\$1,500 for married filing separately) of the net losses per year against dividends or ordinary income of any kind.

You can carry forward excess losses indefinitely. Loss carryovers can be a powerful tax-saving tool in future years if you have a large investment portfolio, real estate holdings or a closely held business that might generate substantial future capital gains.



Finally, remember that capital gains distributions from mutual funds can also absorb capital losses.

### 0% rate

The 0% rate applies to long-term gain that would be taxed at 10% or 15% based on the taxpayer's ordinary-income rate. If you have adult children in one of these tax brackets, consider transferring appreciated assets to them so they can sell the assets and enjoy the 0% rate. This strategy can be even more powerful if you'd be subject to the 3.8% NIIT and/or the 20% long-term capital gains rate if you sold the assets. (See Case Study III.)

**Warning:** If the child will be under age 24 on Dec. 31, first make sure he or she won't be subject to the "kiddie tax." (See page 19.) Also consider any gift tax consequences. (See page 22.)

### Paying attention to details

If you don't pay attention to the details, the tax consequences of a sale may be different from what you expect. For example, the trade date, not the settlement date, of publicly traded securities determines the year in which you recognize the gain or loss.

And if you bought the same security at different times and prices and want to sell high-tax-basis shares to reduce gain or increase a loss to offset other gains, be sure to specifically identify which block of shares is being sold.

### Mutual funds

Investing in mutual funds is an easy way to diversify your portfolio. But beware of the tax pitfalls. First, mutual funds with high turnover rates can create income that's taxed

at ordinary-income rates. Choosing funds that provide primarily long-term gains can save you more tax dollars because of the lower long-term rates.

Second, earnings on mutual funds are typically reinvested, and unless you or your investment advisor keeps track of these additions and increases your basis accordingly, you may report more gain than required when you sell the fund. Since 2012, brokerage firms have been required to track (and report to the IRS) your cost basis in mutual funds acquired during the tax year.

Third, buying equity mutual fund shares late in the year can be costly tax-wise. Such funds often declare a large capital gains distribution at year end, which is a taxable event. If you own the shares on the distribution's record date, you'll be taxed on the full distribution amount even if it includes significant gains realized by the fund before you owned the shares. And you'll pay tax on those gains in the current year — even if you reinvest the distribution.

### Small business stock

By purchasing stock in certain small businesses, you can diversify your portfolio. You also may enjoy preferential tax treatment:

**Conversion of capital loss to ordinary loss.** If you sell qualifying Section 1244 small business stock at a loss, you can treat up to \$50,000 (\$100,000, if married filing jointly) as an ordinary, rather than a capital, loss — regardless of your holding period. This means you can use it to offset ordinary income, reducing your tax by as much as 39.6% of this portion of the loss. Sec. 1244 applies only if total capital invested isn't more than \$1 million.

**Tax-free gain rollovers.** If within 60 days of selling qualified small business (QSB) stock you buy other QSB stock with the proceeds, you can defer the tax on your gain until you dispose of the new stock. The rolled-over gain reduces your basis in the new stock. For determining long-term capital gains treatment, the new stock's holding period includes the holding period of the stock you sold. To be a QSB, a business must be engaged in an active trade or business and must not have assets that exceed \$50 million.

**Exclusion of gain.** Generally, taxpayers selling QSB stock are allowed to exclude up to 50% of their gain if they've held the stock for more than five years. But, depending on the acquisition date, the exclusion may be greater: The exclusion is 75% for stock acquired after Feb. 17, 2009, and before Sept. 28, 2010, and 100% for stock acquired on or after Sept. 28, 2010, and before Jan. 1, 2015. (Congress could extend the 100% exclusion — or some other exclusion that's higher than 50% — to QSB stock acquired in 2015. Contact your tax advisor for the latest information.)

The taxable portion of any QSB gain will be subject to the lesser of your ordinary-income rate or 28%, rather than the normal long-term gains rate. (See Chart 2.) Thus, if the 28% rate and the 50% exclusion apply, the effective rate on the QSB gain will be 14% (28% × 50%).

Keep in mind that all three of these tax benefits are subject to additional requirements and limits. Consult your tax and financial advisors to be sure an investment in small business stock is right for you.

### Passive activities

If you've invested in a trade or business in which you don't materially participate, remember the passive activity rules. Why? Passive activity *income* may be subject to the 3.8% NIIT, and passive activity *losses* generally are deductible only against income from other passive activities. You can carry forward disallowed losses to the following year, subject to the same limits.

To avoid passive activity treatment, you must "materially participate" in the activity, which typically means you must participate in the trade or business more than 500 hours during the year

or demonstrate that your involvement constitutes substantially all of the participation in the activity. (Special rules apply to real estate; see page 13.) To help ensure your hours claim will be able to withstand IRS scrutiny, carefully track and document your time. Contemporaneous recordkeeping is better than records that are created after-the-fact.

If you don't pass the material participation test, consider:

**Increasing your involvement.** If you can exceed 500 hours, the activity no longer will be subject to passive activity rules.

**Grouping activities.** You may be able to group certain activities together to be treated as one activity for tax purposes and exceed the 500-hour threshold. But the rules are complex, and there are potential downsides to consider.

**Looking at other activities.** If you have passive losses, one option is to limit your participation in another activity that's generating income, so that you don't meet the 500-hour test. Another is to invest in another income-producing trade or business that will be passive to you. Under both strategies, you'll have passive income that can absorb your passive losses.

**Disposing of the activity.** This generally allows you to deduct *all* passive losses — including any loss on disposition (subject to basis and capital loss limitations). But, again, the rules are complex.

### Income investments

Qualified dividends are taxed at the favorable long-term capital gains tax rate rather than at your higher ordinary-income tax rate.

Interest income, however, generally is taxed at ordinary-income rates. So stocks that pay qualified dividends may be more attractive tax-wise than other income investments, such as CDs and taxable bonds. But there are exceptions.

Some dividends, for example, are subject to ordinary-income rates. These may include certain dividends from:

- Real estate investment trusts (REITs),
- Regulated investment companies (RICs),
- Money market mutual funds, and
- Certain foreign investments.

CHART 2

### What's the maximum capital gains tax rate?

Assets held	2015 <sup>1</sup>
12 months or less ( <i>short term</i> )	Taxpayer's ordinary-income tax rate
More than 12 months ( <i>long term</i> )	
■ 39.6% ordinary-income tax bracket	20%
■ 25%, 28%, 33% or 35% ordinary-income tax bracket	15%
■ 10% or 15% ordinary-income tax bracket	0%
<b>Some key exceptions</b>	
Long-term gain on collectibles, such as artwork and antiques	28%
Long-term gain attributable to certain recapture of prior depreciation on real property	25%
Gain on qualified small business (QSB) stock held more than 5 years	
■ Acquired on or before Feb. 17, 2009	14% <sup>2</sup>
■ Acquired after Feb. 17, 2009, and before Sept. 28, 2010	7% <sup>3</sup>
■ Acquired on or after Sept. 28, 2010	0%

<sup>1</sup> In addition, the 3.8% NIIT applies to net investment income to the extent that modified adjusted gross income (MAGI) exceeds \$200,000 (singles and heads of households), \$250,000 (married filing jointly) or \$125,000 (married filing separately).

<sup>2</sup> Effective rate based on 50% exclusion from a 28% rate.

<sup>3</sup> Effective rate based on 75% exclusion from a 28% rate.

The tax treatment of bond income varies. For example:

- Interest on U.S. government bonds is taxable on federal returns but exempt by law on state and local returns.
- Interest on state and local government bonds is excludable on federal returns. If the bonds were issued in your home state, interest also may be excludable on your state return, depending on the state.
- Corporate bond interest is fully taxable for federal and state purposes.
- Bonds (except U.S. savings bonds) with original issue discount (OID) build up “interest” as they rise toward maturity. You’re generally considered to earn a portion of that interest annually — even though the bonds don’t pay this interest annually — and you must pay tax on it.

Keep in mind that state and municipal bonds usually pay a lower interest rate. See Case Study IV.

**AMT ALERT!** *Tax-exempt interest from private-activity municipal bonds can trigger or increase AMT liability. However, any income from tax-exempt bonds issued in 2009 and 2010 (along with 2009 and 2010 re-fundings of bonds issued after Dec. 31, 2003, and before Jan. 1, 2009) is excluded from the AMT.*

## Investment interest expense

Investment interest — interest on debt used to buy assets held for



### Case Study IV

## Tax-exempt or taxable bonds? It’s a question of yield



Working with her financial advisor, Cheryl decides she needs more bonds in her investment portfolio. She’s in the 39.6% bracket, so she’s leaning toward municipal bonds. After all, municipal bond interest will be tax-free on Cheryl’s federal return.

But the fact that an investment is tax-exempt doesn’t necessarily make it a better choice than a comparable taxable investment. Municipal bonds typically offer lower yields than comparable corporate bonds. To make a fair comparison, Cheryl needs to calculate the tax-equivalent yield — which incorporates tax savings into the municipal bond’s yield — using this formula:

Tax-equivalent yield = actual yield / (1 – Cheryl’s marginal tax rate).

To take an example, Cheryl considers a municipal bond with a 4.00% yield and a comparable corporate bond that offers a 6.25% yield. Because she’s in the 39.6% tax bracket, the municipal bond’s tax-equivalent yield is  $.04 / (1 - .396) = .0662$ , or 6.62%. In terms of the amount of income she’ll get to keep, the municipal bond is a slightly better choice. If the municipal bond is also exempt from state and local taxes, it’s an even better choice. But Cheryl also needs to consider factors such as risk and how well the bond will help achieve her overall investment goals.

investment, such as margin debt used to buy securities — generally is deductible for both regular tax and AMT purposes. But special rules apply.

Your investment interest deduction is limited to your net investment income, which, for the purposes of this deduction, generally includes taxable interest, nonqualified dividends

and net short-term capital gains (but not long-term capital gains), reduced by other investment expenses. Any disallowed interest is carried forward, and you can deduct it in a later year if you have excess net investment income.

You may elect to treat net long-term capital gains or qualified dividends as investment income in order to deduct more of your investment interest. But if you do, that portion of the long-term capital gain or dividend will be taxed at ordinary-income rates.

Payments a short seller makes to the stock lender in lieu of dividends may be deductible as an investment interest expense. But interest on debt used to buy securities that pay tax-exempt income, such as municipal bonds, isn’t deductible.

Also keep in mind that passive interest expense — interest on debt incurred to fund passive activity expenditures — becomes part of your overall passive activity income or loss, subject to limitations. ❖

### How to prove material participation to avoid passive activity treatment:

- You can use any reasonable means to identify the types of work performed and the approximate number of hours spent, such as contemporaneous appointment books, calendars or narrative summaries.
- Several court decisions have said that courts aren’t required to accept after-the-fact “ballpark guesstimates” or a taxpayer’s unverified, undocumented, and presumably self-serving testimony.



## An uneven real estate recovery calls for planning and foresight

This year's uneven real estate market recovery may not be what homeowners and property investors had in mind. But even if values aren't appreciating as quickly as you might wish, you can still maximize the tax benefits associated with owning a principal residence, vacation home or rental property — or maintaining a home office. Tax planning is particularly important for higher-income individuals who are planning to sell real estate in 2015.

### Home-related deductions

There are many tax benefits to home ownership — among them, various deductions. But the income-based limit on itemized deductions (see page 4) could reduce your savings:

**Property tax deduction.** If you're looking to accelerate or defer deductions, property tax is one expense you may be able to time. (See "Timing income and expenses" on page 2.)

**AMT ALERT!** *Property tax isn't deductible for AMT purposes. If you're subject to the AMT this year, a prepayment may hurt you because you'll lose the benefit of the deduction.*

**Mortgage interest deduction.** You generally can deduct (for both regular tax and AMT purposes) interest on up to a combined total of \$1 million of mortgage debt incurred to purchase, build or improve your principal residence and a second residence. Points paid related to your *principal* residence also may be deductible.

**Home equity debt interest deduction.** Interest on home equity debt used for any purpose (debt limit of \$100,000) may be deductible. So consider using a home equity loan or line of credit to pay off credit cards or auto loans, for which interest isn't deductible and rates may be higher.

**AMT ALERT!** *If home equity debt isn't used for home improvements, the interest isn't deductible for AMT purposes and could trigger or increase AMT liability.*

### Home office deduction

If your home office is your principal place of business (or used substantially and regularly to conduct business) and that's the only use of the space, you generally can deduct a portion of your mortgage interest, property taxes, insurance, utilities and certain other expenses, and the depreciation allocable to the space. Or you may be able to use the simplified option for claiming the deduction. (See Case Study V.)

#### Case Study V

### Safe harbor offers home office relief

Five years ago, Jimmy was audited. One of the auditor's conclusions was that Jimmy had improperly claimed the home office deduction because his home office wasn't used exclusively for business purposes; he also used it as a home gym.

Since his audit, Jimmy has moved his exercise equipment to the basement and followed IRS guidelines to the letter. To ensure he claims the proper amount, Jimmy tracks costs related to his use of his home office and files Form 8829. It's time-consuming, but Jimmy wants to ensure his return is accurate.

Now, he and other taxpayers with a home office have an alternative to tedious recordkeeping — a safe harbor option that can simplify deduction calculations. Under the simplified option, Jimmy can deduct \$5 per square foot for up to 300 square feet (maximum of \$1,500 per year). Although he can't depreciate the portion of his home that's used as an office — as he could under the regular Form 8829 method — Jimmy *can* claim allowable mortgage interest, property taxes and casualty losses in full as itemized deductions on Schedule A, without needing to apportion them between personal and business use of his home.

Jimmy's office is larger than 300 square feet, so he's eligible for the \$1,500 maximum deduction. Although this is a little less than the \$1,700 home office deduction he took in 2014, the safe harbor is actually advantageous to Jimmy. Why? His itemized deduction for qualified home mortgage interest expense and property taxes will be larger, because he doesn't have to allocate a portion of these costs to his home office.

If you're an employee, the business use of your home office must be for your employer's benefit and your home office expenses are a miscellaneous itemized deduction. This means you'll enjoy a tax benefit only if these expenses plus your other miscellaneous itemized expenses exceed 2% of your AGI. (See page 3.)

If you're self-employed, however, you can deduct qualified home office expenses from your self-employment income. The 2% floor doesn't apply.

## Home rental rules

If you rent out all or a portion of your principal residence or second home for less than 15 days, you don't have to report the income. But expenses directly associated with the rental, such as advertising and cleaning, won't be deductible.

If you rent out your principal residence or second home for 15 days or more, you'll have to report the income. But you also may be entitled to deduct some or all of your rental expenses — such as utilities, repairs, insurance and depreciation. Exactly what you can deduct depends on whether the home is classified as a rental property for tax purposes (based on the amount of personal vs. rental use):

**Rental property.** You can deduct rental expenses, including losses, subject to the real estate activity rules discussed at right. You can't deduct any interest that's attributable to your personal use of the home, but you can take the personal portion of property tax as an itemized deduction.

**Nonrental property.** You can deduct rental expenses only to the extent of your rental income. Any excess can be carried forward to offset rental income in future years. You also can take an itemized deduction for the personal portion of both mortgage interest and property taxes. In some situations, it may be beneficial to reduce personal use of a residence so it will be classified as a rental property.

## Home sales

When you sell your principal residence, you can exclude up to \$250,000 (\$500,000 for married filing jointly) of gain if you meet certain tests. Gain that qualifies for exclusion will also be

excluded from the 3.8% NIIT. (See page 8.) To support an accurate tax basis, maintain thorough records, including information on your original cost and subsequent improvements, reduced by any casualty losses and depreciation claimed based on business use. **Warning:** Gain that's allocable to a period of "nonqualified" use generally isn't excludable.

Losses on the sale of a principal residence aren't deductible. But if part of your home is rented out or used exclusively for your business, the loss attributable to that portion may be deductible.

Because a second home is ineligible for the gain exclusion, consider converting it to rental use before selling. It can be considered a business asset, and you may be able to defer tax on any gains through an installment sale or a Section 1031 exchange. Or you may be able to deduct a loss, but only to the extent attributable to a decline in value *after* the conversion.

## Real estate activity rules

Income and losses from investment real estate or rental property are passive by definition — unless you're a real estate professional. Why is this important? Passive activity income may be subject to the 3.8% NIIT, and passive activity losses are generally deductible only against income from other passive activities, with the excess being carried forward.

To qualify as a real estate professional, you must annually perform:

- More than 50% of your personal services in real property trades or businesses in which you materially participate, and
- More than 750 hours of service in these businesses during the year.

Each year stands on its own, and there are other nuances to be aware of. If you're concerned you'll fail either test and be subject to the NIIT or stuck with passive losses, consider increasing your hours so you'll meet the test. Keep in mind that special rules for spouses may help you meet the 750-hour test. **Warning:** The IRS has successfully challenged claims of real estate professional status in instances where the taxpayer didn't keep adequate records of time spent.

## Depreciation-related breaks

Three valuable depreciation-related breaks for real estate investors were extended for 2014 but haven't, as of this writing, been extended to 2015:

- 1. 50% bonus depreciation.** This additional first-year depreciation allowance was for qualifying leasehold improvements.
- 2. Section 179 expensing.** This was an election to deduct under Sec. 179 (rather than depreciate over a number of years) up to \$250,000 of qualified leasehold-improvement, restaurant and retail-improvement property.
- 3. Accelerated depreciation.** This break allowed a shortened recovery period of 15 — rather than 39 — years for qualified leasehold-improvement, restaurant and retail-improvement property.



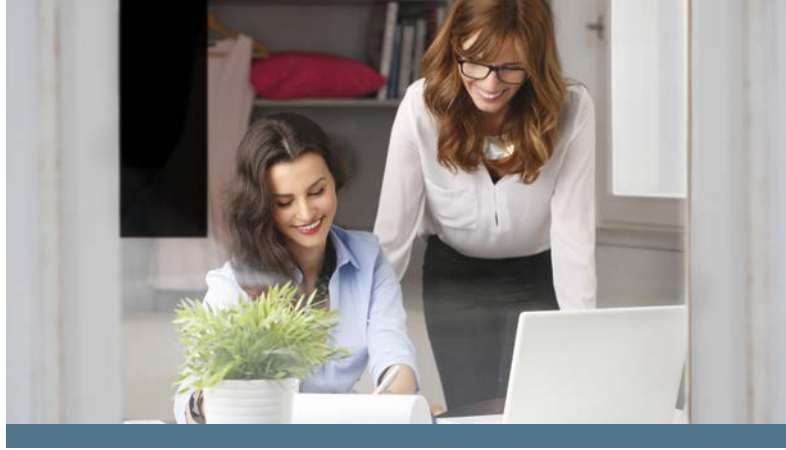
One or more of these breaks could be revived for 2015, perhaps retroactively to Jan. 1. Check with your tax advisor for the latest information.

## Tax-deferral strategies for investment property

It's possible to divest yourself of appreciated investment real estate but defer the tax liability. Such strategies may even help you keep your income low enough to avoid triggering the 3.8% NIIT and the 20% long-term capital gains rate. Here are a couple of deferral strategies to consider:

**Installment sale.** An installment sale allows you to defer gains by spreading them over several years as you receive the proceeds. **Warning:** Ordinary gain from certain depreciation recapture is recognized in the year of sale, even if no cash is received.

**Sec. 1031 exchange.** Also known as a "like-kind" exchange, this technique allows you to exchange one real estate investment property for another and defer paying tax on any gain until you sell the replacement property. Discuss the limits and risks with your tax advisor. ❖



## Business owners can't drop the ball

**T**ax planning is a juggling act for business owners. You have to keep your eye on your company's income and expenses and applicable tax breaks (especially if you own a pass-through entity). But you also need to look out for your own financial future. For example, you should take advantage of retirement plans that allow you to make larger nontaxable contributions than you could make as an employee. And you need to develop an exit plan so that taxes don't trip you up when you sell your business or transfer it to the next generation.

### Retirement saving

If most of your money is tied up in your business, retirement can be a challenge. So if you haven't already set up a tax-advantaged retirement plan, consider doing so this year. If you might be subject to the 3.8% NIIT (see page 8), this may be particularly beneficial because retirement plan contributions can reduce your MAGI and thus help you reduce or avoid the NIIT.

Keep in mind that, if you have employees, they generally must be allowed to participate in the plan, provided they work enough hours and meet other qualification requirements. Here are a few options that may enable you to make substantial contributions:

**Profit-sharing plan.** This is a defined contribution plan that allows discretionary employer contributions and flexibility in plan design. You can make deductible 2015 contributions (see Chart 3 for limits) as late as the due date of your 2015 income tax return, including extensions — provided your plan exists on Dec. 31, 2015.

**SEP.** A Simplified Employee Pension is a defined contribution plan that provides benefits similar to those of a profit-sharing plan. But you can establish a SEP in 2016 and still make deductible 2015 contributions as late as the due date of your 2015 income

tax return, including extensions. (See Chart 3 for contribution limits.) Another benefit is that a SEP is easier to administer than a profit-sharing plan.

**Defined benefit plan.** This plan sets a future pension benefit and then actuarially calculates the contributions needed to attain that benefit. The maximum annual benefit for 2015 is generally \$210,000 or 100% of average earned income for the highest three consecutive years, if less. Because it's actuarially driven, the 2015 contribution needed to attain the projected future annual benefit may exceed the maximum contributions allowed by other plans, depending on your age and the desired benefit.

For this reason, a business owner age 50 or older with a younger staff should consider a defined benefit plan.

You can make deductible 2015 defined benefit plan contributions until the due date of your return, provided your plan exists on Dec. 31, 2015. **Warning:** Employer contributions generally are required and must be paid quarterly if there was a shortfall in funding for the prior year.

### Exit planning

An exit strategy is a plan for passing on responsibility for running the company, transferring ownership and extracting your money from the business. This requires planning well in advance of the transition. Here are the most common exit options:

**Buy-sell agreement.** When a business has more than one owner, a buy-sell agreement can be a powerful tool. The agreement controls what happens to the business when a specified event

CHART 3

### Profit-sharing plan vs. SEP: How much can you contribute?

Profit-sharing plan	SEP
<b>2015 maximum contribution:</b> \$53,000 or \$59,000.	<b>2015 maximum contribution:</b> \$53,000.
<b>Eligibility:</b> You can't contribute more than 25% of your compensation generally, but you can contribute 100% up to the 401(k) limits if the plan includes a 401(k) arrangement. To qualify for the \$59,000 limit, your plan must include a 401(k) arrangement and you must be eligible to make catch-up contributions (that is, be age 50 or older).	<b>Eligibility:</b> You can't contribute more than 25% of your eligible compensation (net of the deduction for the contribution if you're self-employed). So, to make the maximum contribution, your eligible compensation must be at least \$212,000 (\$265,000 if you're self-employed).

*Note: Other factors may further limit your maximum contribution.*



occurs, such as an owner's retirement, disability or death. Among other benefits, a well-drafted agreement:

- Provides a ready market for the departing owner's shares,
- Prescribes a method for setting a price for the shares, and
- Allows business continuity by preventing disagreements caused by new, unwanted owners.

A key issue with any buy-sell agreement is providing the buyer(s) with a means of funding the purchase. Life or disability insurance often helps fulfill this need and can give rise to several tax issues and opportunities.

One of the biggest advantages of life insurance as a funding method is that proceeds generally are excluded from the beneficiary's taxable income. There are exceptions, however, so be sure to consult your tax advisor.

**Succession within the family.** You can pass your business on to family members by giving them interests, selling them interests or doing some of each. Be sure to consider your income needs, the tax consequences, and how family members will feel about your choice.

Now may be a particularly good time to transfer ownership interests through gifting. If your business is worth less than it was several years ago or if you're anticipating meaningful growth, you'll be able to transfer a greater number of shares now without exceeding your \$14,000 gift tax annual exclusion amount.

Valuation discounts may further reduce the taxable value. And, with the lifetime gift tax exemption at a record-high \$5.43 million for 2015, this may be a great year to give away more than just your annual exclusion amounts. (See page 22 for more on gift and estate planning.)

**Management buyout.** If family members aren't interested in or capable of taking over your business, one option is a management buyout. This can provide for a smooth transition because there may be little learning curve for the new owners. Plus, you avoid the time and expense of finding an outside buyer.



**ESOP.** If you want rank and file employees to become owners as well, an employee stock ownership plan (ESOP) may be the ticket. An ESOP is a qualified retirement plan created primarily to purchase your company's stock. Whether you're planning for liquidity, looking for a tax-favored loan or wanting to supplement an employee benefit program, an ESOP can offer many advantages.

**Sale to an outsider.** If you can find the right buyer, you may be able to sell the business at a premium. Putting your business into a sale-ready state can help you get the best price. This generally means transparent operations, assets in good working condition and a healthy balance sheet.

### Sale or acquisition

Whether you're selling your business as part of an exit strategy or acquiring another company to help grow your business, the tax consequences can have a major impact on the transaction's success or failure. Here are a few key tax considerations:

**Asset vs. stock sale.** With a corporation, sellers typically prefer a stock sale for the capital gains treatment and to avoid double taxation. (For more on capital gains tax, see page 8.) Buyers generally want an asset sale to maximize future depreciation write-offs and avoid potential liabilities.

**Tax-deferred transfer vs. taxable sale.** A transfer of corporation ownership can be tax-deferred if made solely in exchange for stock or securities of the recipient corporation in a qualifying

reorganization. But the transaction must comply with strict rules.

Although it's generally better to postpone tax, there are some advantages to a taxable sale:

- The parties don't have to meet the technical requirements of a tax-deferred transfer.
- The seller doesn't have to worry about the quality of buyer stock or other business risks of a tax-deferred transfer.
- The buyer enjoys a stepped-up basis in its acquisition's assets and doesn't have to deal with the seller as a continuing equity owner.

**Installment sale.** A taxable sale might be structured as an installment sale if the buyer lacks sufficient cash or pays a contingent amount based on the business's performance. An installment sale also may make sense if the seller wishes to spread the gain over a number of years — which could be especially beneficial if it would allow the seller to stay under the thresholds for triggering the 3.8% NIIT or the 20% long-term capital gains rate. But an installment sale can backfire on the seller. For example:

- Depreciation recapture must be reported as gain in the year of sale, no matter how much cash the seller receives.
- If tax rates increase, the overall tax could wind up being more.

Of course, tax consequences are only one of many important considerations when planning a sale or acquisition. ❖

### Tax benefits of ESOPs:

- If the ESOP acquires at least 30% of the company, you may be able to defer the gain on the sale of your shares by reinvesting the proceeds in qualified replacement property within one year after the sale.
- ESOPs permit your company to finance a buyout with borrowed funds. A "leveraged" ESOP essentially permits your company to deduct the interest and principal on loans used to make ESOP contributions.
- Your company can deduct certain dividends paid on ESOP shares. Interest and dividend payments don't count against contribution limits.



## Putting your donations to work in 2015

There's a silver lining to higher income taxes: Your charitable deductions are more valuable. Donations to qualified charities generally are fully deductible for regular tax and AMT purposes and can also help higher-income taxpayers reduce their estate tax exposure. As an added bonus, charitable gifts are easy to time for the greatest tax advantage. Note, however, that many rules and limits apply, and that some types of gifts may help you — and your favorite organization — reap greater benefits.

### Cash donations

Outright gifts of cash (which include donations made via check, credit card and payroll deduction) are the easiest. The substantiation requirements depend on the gift's value:

- Gifts under \$250 can be supported by a canceled check, credit card receipt or written communication from the charity.
- Gifts of \$250 or more must be substantiated by the charity.

Deductions for cash gifts to public charities can't exceed 50% of your adjusted gross income (AGI). The AGI limit is 30% for cash donations to nonoperating private foundations. Contributions exceeding the applicable AGI limit can be carried forward for up to five years.

**AMT ALERT!** Charitable contribution deductions are allowed for AMT purposes, but your tax savings may be less if you're subject to the AMT. For example, if you're in the 39.6% tax bracket for regular income tax purposes but the 28% tax bracket for AMT purposes, your deduction may be worth only 28% instead of 39.6%.

### Stock donations

Appreciated publicly traded stock you've held more than one year is long-term capital gains property, which can make one of the best charitable gifts. Why?

Because you can deduct the current fair market value and avoid the capital gains tax you'd pay if you sold the property.

This will be especially beneficial to taxpayers facing the 3.8% NIIT (see page 8) or the top 20% long-term capital gains rate this year.

Donations of long-term capital gains property are subject to tighter deduction limits, however — 30% of AGI for gifts to public charities, 20% for gifts to nonoperating private foundations.

#### CHART 4

### What's your donation deduction?

**Cash.** This includes not just actual cash but gifts made by check, credit card or payroll deduction. You may deduct 100%.

**Ordinary-income property.** Examples include stocks and bonds held one year or less, inventory, and property subject to depreciation recapture. You generally may deduct only the lesser of fair market value or your tax basis.

**Long-term capital gains property.** You may deduct the current fair market value of appreciated stocks and bonds held more than one year.

**Tangible personal property.** Your deduction depends on the situation:

- If the property *isn't* related to the charity's tax-exempt function (such as an antique donated for a charity auction), your deduction is limited to your basis.
- If the property *is* related to the charity's tax-exempt function (such as an antique donated to a museum for its collection), you can deduct the fair market value.

**Vehicle.** Unless it's being used by the charity, you generally may deduct only the amount the charity receives when it sells the vehicle.

**Use of property.** Examples include use of a vacation home and a loan of artwork. Generally, you receive no deduction because it isn't considered a completed gift. There may, however, be ways to structure the gift to enable you to get a deduction.

**Services.** You may deduct only your out-of-pocket expenses, not the fair market value of your services. You can deduct 14 cents per charitable mile driven.

**IRA funds.** If you were age 70½ or older, in 2014 you could have distributed up to \$100,000 from your IRA directly to charity. No charitable deduction was allowed for any amount that would otherwise have been taxable, but you'd save the tax you would otherwise have owed on the distribution. Such a donation could help satisfy your required minimum distribution. (See page 21.) However, this break expired Dec. 31, 2014, and, as of this writing, it hasn't been extended to 2015.

**Note:** Your annual charitable donation deductions may be reduced if they exceed certain limits based on your AGI, the type of donation and the type of charity receiving the donation. If you receive some benefit from the charity in connection with your donation, such as services or products, your deduction must be reduced by the value of the benefit you receive. Various substantiation requirements also apply. Consult your tax advisor for additional details.

Don't donate stock that's worth less than your basis. Instead, sell the stock so you can deduct the loss and then donate the cash proceeds to charity.

## Making gifts over time

If you don't know which charities you want to benefit but you'd like to start making large contributions now, consider a private foundation. It offers you significant control over how your donations ultimately will be used. You must comply with complex rules, however, which can make foundations expensive to run. Also, the AGI limits for deductibility of contributions to nonoperating foundations are lower.

If you'd like to influence how your donations are spent but avoid a foundation's downsides, consider a donor-advised fund (DAF). Many larger public charities and investment firms offer them. **Warning:** To deduct your DAF contribution, you must obtain a written acknowledgment from the sponsoring organization that it has exclusive legal control over the assets contributed.

## Charitable remainder trusts

To benefit a charity while helping ensure your own financial future, consider a CRT. Here's how it works:

- For a given term, the CRT pays an amount to you annually (some of which generally is taxable).
- At the term's end, the CRT's remaining assets pass to one or more charities.
- When you fund the CRT, you receive an income tax deduction for the present value of the amount that will go to charity.
- The property is removed from your estate.

A CRT can also help diversify your portfolio if you own non-income-producing assets that would generate a large capital gain if sold. Because a CRT is tax-exempt, it can sell the property without paying tax on the gain and then invest the proceeds in a variety of stocks and bonds.

You'll owe capital gains tax when you receive CRT payments, but, because the payments are spread over time, much of the liability will be deferred. Plus, a portion of each payment might

### Case Study VI

## A CRT can reduce single-stock exposure risk



Delia's portfolio consists of \$1.5 million in a single publicly traded stock (from when her company went public) with a low tax basis and other securities valued at \$500,000. She feels the time is right to diversify her portfolio, but she's been reluctant to do so because of the tax she'd have to pay on the gain.

After consulting her tax advisor, she decides to contribute \$1 million of the stock that has only a \$100,000 basis to a charitable remainder trust (CRT). The trust can sell the stock without paying any current capital gains tax on the \$900,000 gain — avoiding the \$214,200 in tax that Delia would have owed had she sold the stock herself (assuming a 23.8% tax on capital gains). The trust can use the sale proceeds for other investments, which in turn helps diversify Delia's portfolio because of her income interest in the trust. She can also use her trust payouts to make investments to further diversify her portfolio.

Assuming the CRT comes with a 5% payout rate, Delia will receive \$50,000 each year for the trust's term, part of which will be taxable depending on the trust's net income and provisions for reserving long-term capital gains. She'll also receive a current-year charitable deduction for the present value of the remainder amount going to charity. Assuming that the CRT's term is Delia's life and that she's age 50 when she funds the CRT, her income tax deduction would be approximately \$262,480.

be considered tax-free return of principal. This may help you reduce or avoid exposure to the 3.8% NIIT and the 20% top long-term capital gains rate.

You can name someone other than yourself as income beneficiary or fund the CRT at your death, but the tax consequences will be different.

## Charitable lead trusts

To benefit charity while transferring assets to loved ones at a reduced tax cost, consider a CLT. It works as follows:

- For a given term, the CLT pays an amount to one or more charities.
- At the term's end, the CLT's remaining assets pass to one or more loved ones you name as remainder beneficiaries.
- When you fund the CLT, you make a taxable gift equal to the present value of the amount that will go to the remainder beneficiaries.
- The property is removed from your estate.

For gift tax purposes, the remainder interest is determined assuming that the trust assets will grow at the Section 7520 rate. The lower the Sec. 7520 rate, the smaller the remainder interest and the lower the possible gift tax — or the less of your lifetime gift tax exemption you'll have to use up. If the trust's earnings outperform the Sec. 7520 rate, the excess earnings will be transferred to the remainder beneficiaries gift- and estate-tax-free.

Because the Sec. 7520 rate currently is low, now may be a good time to take the chance that your actual return will outperform it. Plus, with the currently high gift tax exemption, you may be able to make a larger transfer to the trust this year without incurring gift tax liability. (For more on the gift tax, see page 22.)

You can name yourself as the remainder beneficiary or fund the CLT at your death, but the tax consequences will be different. ❖



## Tax-savings opportunities abound when it comes to family and education

Providing children or grandchildren with an excellent education is the top financial priority for many families. Fortunately, tax-deferred and tax-free savings plans can help parents and grandparents send children to school *and* realize tax benefits. But there are other ways to promote a child's strong financial future. For example, children need to understand the value of saving — and contributing to their own IRA can be both an educational and a tax-savings opportunity.

### IRAs for teens

One of the best ways to get children on the right financial track is to set up IRAs for them. Their retirement may seem too far off to warrant saving now, but IRAs can be perfect for teenagers precisely because they likely will have many years to let their accounts grow tax-deferred or tax-free.

The 2015 contribution limit is the lesser of \$5,500 or 100% of earned income. A teen's *traditional* IRA contributions typically are deductible, but distributions will be taxed. *Roth* IRA contributions aren't deductible, but qualified distributions will be tax-free.

Choosing a Roth IRA is typically a no-brainer if a teen doesn't earn income that exceeds the standard deduction (\$6,300 for 2015 for single taxpayers), because he or she will likely gain no benefit from the ability to deduct a traditional IRA contribution. Even above that amount, the teen probably is taxed at a very low rate, so the Roth will typically still be the better answer. (For more information on Roth IRAs, see page 20.)

If your children or grandchildren don't want to invest their hard-earned money, consider *giving* them up to the amount they're eligible to contribute. But keep the gift tax in mind. (See page 22.)

If they don't have earned income and you own a business, consider hiring them. As the business owner, you can deduct their pay, and other tax benefits may apply. **Warning:** The children must be paid in line with what you'd pay nonfamily employees for the same work.

### 529 plans

Section 529 plans provide another valuable tax-advantaged savings opportunity. You can choose a prepaid tuition plan to secure current tuition rates or a tax-advantaged savings plan to fund college expenses. Here are some of the possible benefits of such plans:

- Although contributions aren't deductible for federal purposes, plan assets can grow tax-deferred. (Some states offer tax incentives in the form of deductions or credits.)
- The plans usually offer high contribution limits, and there are no income limits for contributing.
- There's generally no beneficiary age limit for contributions or distributions.
- You can control the account, even after the child is of legal age.
- You can make tax-free rollovers to another qualifying family member.

Whether a prepaid tuition plan or a savings plan is better depends on your situation and goals.

### Prepaid tuition vs. savings plan

With a 529 *prepaid tuition plan*, if your contract is for four years of tuition, tuition is guaranteed regardless of its cost at the time the beneficiary actually attends the school. One downside is that there's uncertainty in how benefits will be applied if the beneficiary attends a different school. Another is that the plan doesn't cover costs other than tuition, such as room and board.

A 529 *college savings plan*, on the other hand, can be used to pay a student's expenses at most postsecondary educational institutions. Distributions used to pay qualified expenses (such as tuition, mandatory fees, books, equipment, supplies and, generally, room and board) are income-tax-free for federal purposes and typically for state purposes as well, thus making the tax deferral a permanent savings.

The biggest downside may be that you don't have direct control over investment decisions; you're limited to the options the plan offers. Additionally, for funds already in the plan, you can make changes to your investment options only twice during the year or when you change beneficiaries. (Before 2015, generally such changes were allowed only *once* a year or when beneficiaries were changed.) For these reasons, some taxpayers prefer Coverdell ESAs. (See page 19.)

But each time you make a *new* contribution to a 529 savings plan, you can select a different option for that contribution, regardless of how many times you contribute throughout the year. And every 12 months you can make a tax-free rollover to a different 529 plan for the same child.

## Jumpstarting a 529 plan

To avoid gift taxes on 529 plan contributions, you must either limit them to \$14,000 annual exclusion gifts or use part of your lifetime gift tax exemption. A special break for 529 plans allows you to front-load five years' worth of annual exclusions and make up to a \$70,000 contribution (or \$140,000 if you split the gift with your spouse). That's *per beneficiary*.

If you're a grandparent, this can be a powerful estate planning strategy.

## ESAs

Coverdell Education Savings Accounts (ESAs) are similar to 529 savings plans in that contributions aren't deductible for federal purposes, but plan assets can grow tax-deferred and distributions used to pay qualified education expenses are income-tax-free.

One of the biggest ESA advantages is that tax-free distributions aren't limited to college expenses; they also can fund elementary and secondary school

costs. Another advantage is that you have more investment options.

ESAs are worth considering if you want to fund elementary or secondary education expenses or would like to have direct control over how and where your contributions are invested. But the \$2,000 contribution limit is low, and it's phased out based on income. The limit begins to phase out at a modified adjusted gross income (MAGI) of \$190,000 for married filing jointly and \$95,000 for other filers. No contribution can be made when MAGI hits \$220,000 and \$110,000, respectively.

Also, amounts left in an ESA when the beneficiary turns age 30 generally must be distributed within 30 days, and any earnings may be subject to tax and a 10% penalty.

## Gifts and the "kiddie tax"

If you'd like to help your grandchildren (or other minors) fund their college education but you don't want to be subject to the limitations of a 529 plan or an ESA, you can transfer cash, stocks and bonds to a Uniform Gifts (or Transfers) to Minors Act (UGMA/UTMA) account:

- Although the transfer is irrevocable, you maintain control over the assets, until the beneficiary age at which the UGMA/UTMA account terminates (age 18 or 21 in most states).

- The transfer qualifies for the annual gift tax exclusion. (See page 22.)

But UGMA/UTMA accounts are less attractive from an income tax perspective than they used to be: The income shifting that once — when the "kiddie tax" applied only to those under age 14 — provided families with significant tax savings now offers much more limited benefits. Today, the kiddie tax applies to children under age 19 and to full-time students under age 24, unless the students provide more than half of their own support from earned income.

For children subject to the kiddie tax, any unearned income beyond \$2,100 (for 2015) is taxed at their parents' marginal rate, if higher, rather than their own, typically low, rate. Keep this in mind before transferring income-generating assets to them, whether directly or via an UGMA/UTMA account.

## American Opportunity credit

When your child enters college, you may not qualify for the American Opportunity credit because your income is too high (phaseout range of \$80,000 – \$90,000; \$160,000 – \$180,000 for joint filers), but your child might. The maximum credit, per student, is \$2,500 per year for the first four years of postsecondary education. And both the credit and a tax-free 529 plan or ESA distribution can be taken as long as expenses paid with the distribution aren't used to claim the credit.

If your dependent child claims the credit, you must forgo your dependency exemption for him or her (and the child can't take the exemption). But because of the exemption phase-out, you might lose the benefit of your exemption anyway:

- If your exemption *is* fully phased out, there likely is no downside to your child taking the credit.
- If your exemption *isn't* fully phased out, compare the tax savings your child would receive from the credit with the savings you'd receive from the exemption to determine which break will provide the greater overall savings for your family.

Your tax advisor can help you run the numbers. ❖

## What parents need to know about filing returns for the "kiddie tax":

- The tax can't be computed accurately until you know your income. Thus, your child's return may have to be extended until your return has been completed.
- If your return is amended or adjusted upon IRS audit, your child's return could require correction (assuming the changes to your return affect your tax bracket).
- If your child can't file his or her own tax return (for example, because of age), you're responsible for filing a return on your child's behalf.

### WHAT'S NEW!

## ABLE accounts offer a tax-advantaged way to fund disability expenses

**Who's affected:** People with disabilities and their families

**Key changes:** The Achieving a Better Life Experience (ABLE) Act of 2014 offers a new type of tax-advantaged savings program for people who are disabled or blind. The act allows states to establish tax-exempt ABLE programs to help people with disabilities build accounts that can pay qualified disability expenses.

For federal purposes, tax treatment of these accounts will be similar to that of Section 529 college savings plans in that anyone can make contributions to ABLE accounts, the contributions won't be tax deductible and income earned by the accounts generally won't be taxed. Also, distributions, including portions attributable to investment earnings generated by the account, to an eligible individual for qualified expenses won't be taxable.

Qualified expenses are those related to the individual's disability, such as health, education, housing, transportation, employment training, assistive technology, personal support, and related services and expenses.

**Planning tip:** Contact your tax advisor for the latest information on the availability of ABLE accounts in your state.



## Leverage tax-advantaged retirement plans and watch out for tax traps

It's true that the amount high-income taxpayers are allowed to contribute to tax-advantaged retirement plans is limited. However, the exponential power of tax-deferred (or in the case of Roth accounts, tax-free) compounding makes these plans hard to pass up. And consider this: Maximizing your contributions to a traditional plan could keep you from becoming subject to the 39.6% tax rate or the 3.8% NIIT. But be careful when taking IRA distributions — they could push you into a higher tax bracket or trigger the NIIT. To fully leverage retirement plan advantages, look ahead and watch out for tax traps.

### Retirement plan contributions

Contributing the maximum you're allowed (see Chart 5) to an employer-sponsored defined contribution plan, such as a 401(k), is likely a smart move:

- Contributions are typically pretax, reducing your modified adjusted gross income (MAGI). This in turn can help you reduce or avoid exposure to the 3.8% NIIT. (See page 8.)
- Plan assets can grow tax-deferred — meaning you pay no income tax until you take distributions.
- Your employer may match some or all of your contributions pretax.

If you participate in a 401(k), 403(b) or 457 plan, it may allow you to designate some or all of your contributions as Roth contributions. While Roth contributions don't reduce your current MAGI, qualified distributions will be tax-free. Roth contributions may be especially beneficial for higher-income earners, who are ineligible to contribute to a Roth IRA.

### Roth IRA conversions

If you have a traditional IRA, consider whether you might benefit from converting some or all of it to a Roth IRA. A conversion can allow you to turn tax-deferred future growth into tax-free growth. It also can provide estate planning



advantages: Unlike other retirement plans, Roth IRAs don't require you to take distributions during your life, so you can let the entire balance grow tax-free over your lifetime for the benefit of your heirs.

There's no income-based limit on who can convert to a Roth IRA. But the converted amount is taxable in the year of the conversion. Whether a conversion makes sense for you depends on factors such as:

- Your age,
- Whether the conversion would push you into a higher income tax bracket or trigger the 3.8% NIIT,
- Whether you can afford to pay the tax on the conversion,
- Your tax bracket now and expected tax bracket in retirement, and
- Whether you'll need the IRA funds in retirement.

Your tax advisor can run the numbers and help you decide if a conversion is right for you this year.

CHART 5

### Retirement plan contribution limits for 2015

	Regular contribution	Catch-up contribution <sup>1</sup>
Traditional and Roth IRAs	\$ 5,500	\$ 1,000
401(k)s, 403(b)s, 457s and SARSEPs <sup>2</sup>	\$ 18,000	\$ 6,000
SIMPLEs	\$ 12,500	\$ 3,000

<sup>1</sup> For taxpayers age 50 or older by the end of the tax year.

<sup>2</sup> Includes Roth versions where applicable.

**Note:** Other factors may further limit your maximum contribution. If you're a business owner or self-employed, you may be able to set up a plan that allows you to make much larger contributions. See Chart 3 on page 14.

## To convert or not to convert to a Roth IRA



Jennifer is deciding whether to convert her \$200,000 traditional IRA to a Roth IRA. But does she really want to pay the tax today at her 39.6% rate? After all, she reasons, that's almost \$80,000 she'd be out of pocket now.

Jennifer is 40 years old and anticipates not having to use her IRA funds in retirement. Given the fact that the Roth IRA isn't subject to minimum distribution requirements (unless the account is inherited), she may be a good candidate for a Roth conversion. Over the years, her \$200,000 account could grow to become a much larger amount, and all qualified distributions would be tax-free. But these benefits must be weighed against the possibility that her tax rate in the future could end up being much lower than it is today, in which case paying tax on distributions then could be less costly than paying them on a conversion now.

Nevertheless, even if Jennifer were older — say, 60 years old — a Roth conversion might make sense. This is especially true if her primary objective is to transfer her IRA to her children without their being subject to income tax on the distributions.

**A rollover to an IRA.** If you participate in a new employer's plan, this will require keeping track of two plans. But it may be the best alternative because IRAs offer nearly unlimited investment choices.

If you choose a rollover, request a direct rollover from your old plan to your new plan or IRA. Otherwise, you'll need to make an indirect rollover within 60 days to avoid tax and potential penalties. **Warning:** If you don't do a direct rollover, the check you receive from your old plan may be net of 20% federal income tax withholding. If you don't roll over the gross amount (making up for the withheld amount with other funds), you'll be subject to income tax — and potentially the 10% penalty — on the difference.

### Required minimum distributions

After you reach age 70½, you must take annual required minimum distributions (RMDs) from your IRAs (except Roth IRAs) and, generally, from your defined contribution plans. If you don't comply, you can owe a penalty equal to 50% of the amount you should have withdrawn but didn't. You can avoid the RMD rule for a non-IRA Roth plan by rolling the funds into a Roth IRA.

So, should you take distributions between ages 59½ and 70½, or take more than the RMD after age 70½? Waiting to take distributions until age 70½ generally is advantageous because of tax-deferred compounding. But a distribution (or larger distribution) in a year your tax bracket is low may save tax. Be sure, however, to consider the lost future tax-deferred growth and, if applicable, whether the distribution could: 1) cause Social Security payments to become taxable, 2) increase income-based Medicare premiums and prescription drug charges, or 3) affect other tax breaks with income-based limits.

**Warning:** While retirement plan distributions aren't subject to the additional 0.9% Medicare tax (see page 5) or 3.8% NIIT, they *are* included in your MAGI. That means they could trigger or increase the NIIT, because the thresholds for that tax are based on MAGI.

If you've inherited a retirement plan, consult your tax advisor about the distribution rules that apply to you. ❖

If you *don't* have a traditional IRA, consider a “back door” Roth IRA: You set up a traditional account and make a nondeductible contribution to it. You then wait until the transaction clears and convert the traditional account to a Roth account. The only tax due will be on any growth in the account between the time you made the contribution and the date of conversion.

### Early withdrawals

With a few exceptions, retirement plan distributions before age 59½ are subject to a 10% penalty on top of any income tax that ordinarily would be due on a withdrawal. This means that, if you're in the top tax bracket of 39.6%, you can lose almost half of your withdrawal to taxes and penalties — and more than half if you're also subject to state income taxes and/or penalties. Additionally, you'll lose the potential tax-deferred future growth on the withdrawn amount.

If you have a Roth account, you can withdraw up to your contribution amount without incurring taxes or penalties. But you'll be losing the potential tax-free growth on the withdrawn amount.

So if you're in need of cash, consider tapping your taxable investment accounts rather than dipping into your retirement plan. (See page 8 for information on the tax treatment of investments.)

### Leaving a job

When you change jobs or retire, avoid taking a lump-sum distribution from your employer's retirement plan because it generally will be taxable — and potentially subject to the 10% early-withdrawal penalty. Here are options that will help you avoid current income tax and penalties:

**Staying put.** You may be able to leave your money in your old plan. But if you'll be participating in a new employer's plan or you already have an IRA, this may not be the best option. Why? Because keeping track of multiple plans can make managing your retirement assets more difficult. Also consider how well the old plan's investment options meet your needs.

**A rollover to your new employer's plan.** This may be a good solution if you're changing jobs, because it may leave you with only one retirement plan to keep track of. But also evaluate the new plan's investment options.



# Estate planning can secure your legacy

**A**s difficult as it is, accumulating wealth is only the first step to providing a financially secure future for your family. You also need to develop a comprehensive estate plan. The earlier you begin, the more options you'll have to grow and transfer your wealth in a way that minimizes taxes and leaves the legacy you desire.

## Estate tax

The estate tax rate is currently 40%, and it's scheduled to remain at that level. The estate tax exemption increased to \$5.43 million for 2015 (see Chart 6), and it will continue to be adjusted annually for inflation.

To avoid unintended consequences, review your estate plan in light of the changing exemption. A review will allow you to make the most of available exemptions and ensure your assets will be distributed according to your wishes.

## Gift tax

The gift tax continues to follow the estate tax exemption and rates. (See Chart 6.) Any gift tax exemption used during life reduces the estate tax exemption available at death. Using up some of your exemption during life can be tax-smart, depending on your situation and goals. See Case Study VIII.

You also can exclude certain gifts of up to \$14,000 per recipient each year (\$28,000 per recipient if your spouse elects to split the gift with you or you're giving community property) without depleting any of your gift tax exemption. This is the same as the 2014 amount. (The exclusion is adjusted for inflation annually, but it increases only in \$1,000 increments, so it typically goes up only every few years.)

## State taxes

A federal estate tax deduction is available for state estate taxes paid. Keep in mind that some states impose estate tax at a lower threshold than the federal government does.

To avoid unexpected tax liability or other unintended consequences, it's critical to consider state law. Consult a tax advisor with expertise on your particular state.

## Exemption portability

If one spouse dies and part (or all) of his or her estate tax exemption is unused at his or her death, the estate can elect to permit the surviving spouse to use the deceased spouse's remaining estate tax exemption.

**Warning:** Portability is available only for the most recently deceased spouse. It doesn't apply to the GST tax exemption and isn't recognized by some states. And it must be elected on an estate tax return for the deceased spouse — even if no tax is due.

The portability election will provide flexibility if proper planning hasn't been done before the first spouse's death.

**Warning:** You need to use your 2015 exclusion by Dec. 31. The exclusion doesn't carry over from year to year. For example, if you don't make an annual exclusion gift to your granddaughter this year, you can't add \$14,000 to your 2016 exclusion to make a \$28,000 tax-free gift to her next year.

## GST tax

The GST tax generally applies to transfers (both during life and at death) made to people more than one generation below you, such as your grandchildren. This is in addition to any gift or estate tax due. The GST tax continues to follow the estate tax exemption and rate. (See Chart 6.)

The GST tax exemption can be a valuable tax-saving tool for taxpayers with large estates whose children also have — or may eventually have — large estates. With proper planning, they can use the exemption to make transfers to grandchildren and avoid any tax at their children's generation.

CHART 6

### Transfer tax exemptions and rates

Year	Estate tax exemption <sup>1</sup>	Gift tax exemption	GST tax exemption	Estate, gift and GST tax rate
2014	\$ 5.34 million	\$ 5.34 million	\$ 5.34 million	40%
2015	\$ 5.43 million	\$ 5.43 million	\$ 5.43 million	40%
Future years	Indexed for inflation	Indexed for inflation	Indexed for inflation	40%

<sup>1</sup> Less any gift tax exemption already used during life.



But portability doesn't protect future growth on assets from estate tax like applying the exemption to a credit shelter trust does. Trusts offer other benefits as well, such as creditor protection, remarriage protection, GST tax planning and state estate tax benefits.

So married couples should still consider marital and credit shelter trusts — and transferring assets to each other to the extent necessary to fully fund them at the first death. Transfers to a spouse (during life or at death) are tax-free under the marital deduction, assuming he or she is a U.S. citizen.

## Tax-smart giving

Giving away assets now will help reduce the size of your taxable estate. Here are some strategies for tax-smart giving:

**Choose gifts wisely.** Consider both estate and income tax consequences and the economic aspects of any gifts you'd like to make:

- To minimize *estate tax*, gift property with the greatest future appreciation potential.
- To minimize *your beneficiary's income tax*, gift property that hasn't already appreciated significantly since you've owned it.
- To minimize *your own income tax*, don't gift property that's declined in value. Instead, consider selling the property so you can take the tax loss and then gifting the sale proceeds.

### Plan gifts to grandchildren carefully.

Annual exclusion gifts are generally exempt from the GST tax, so they also help you preserve your GST tax exemption for other transfers. For gifts to a grandchild that don't qualify for the exclusion to be tax-free, you generally must apply both your GST tax exemption and your gift tax exemption.

**Gift interests in your business.** If you own a business, you can leverage your gift tax exclusions and exemption by gifting ownership interests, which may be eligible for valuation discounts. So, for example, if the discounts total 30%, in 2015 you can gift an ownership interest equal to as much as \$20,000 tax-free because the discounted value doesn't exceed the \$14,000 annual exclusion.

## Case Study VIII

### When "taxable" gifts save taxes



Bradley has an estate of \$8 million. In 2015, he has already made \$14,000 annual exclusion gifts to his son and each of his grandchildren. He's pleased that the \$5.43 million gift and estate tax exemption will continue to be indexed for inflation. But he believes his estate will grow at a much faster rate and is concerned that he could have substantial estate tax exposure. So he gives away an additional \$3 million of assets.

Bradley uses \$3 million of his gift tax exemption by making the taxable gift. Therefore, his estate can't use that amount as an exemption. But by making the taxable gift, he also removes the future appreciation from his estate. If the assets, say, double in value before Bradley's death, the gift will essentially have removed \$6 million from his estate. This amount escapes the estate tax.

One caveat: Watch for taxable gifts made within three years of the date of death, because they may have to be brought back into the estate as though they had never been made.

**Warning:** The IRS may challenge the calculation; a professional, independent valuation is recommended.

**Gift FLP interests.** Another way to potentially benefit from valuation discounts is to set up a family limited partnership. You fund the FLP and then gift limited partnership interests. **Warning:** The IRS scrutinizes FLPs, so be sure to properly set up and operate yours.

**Pay tuition and medical expenses.** You may pay these expenses without the payment being treated as a taxable gift to the student or patient, as long as the payment is made directly to the provider.

**Make gifts to charity.** Donations to qualified charities aren't subject to gift tax and may provide an income tax deduction. (See page 16.)

## Trusts

Trusts can provide significant tax savings while preserving some control over what happens to the transferred assets. You may want to consider these:

- A *credit shelter (or bypass) trust* helps married couples minimize estate tax and provides additional benefits.
- A *qualified terminable interest property (QTIP) trust* can benefit first a surviving spouse and then children from a prior marriage.

- A *qualified personal residence trust (QPRT)* allows you to give your home to your children today — removing it from your taxable estate at a reduced tax cost (provided you survive the trust's term) — while you retain the right to live in it for a certain period.
- A *grantor-retained annuity trust (GRAT)* works on the same principle as a QPRT but allows you to transfer other assets; you receive payments from the trust for a certain period.

Finally, a GST — or "dynasty" — trust can help you leverage both your gift and GST tax exemptions, and it can be an excellent way to potentially lock in the currently high exemptions while removing future appreciation from your estate.

## Insurance

Along with protecting your family's financial future, life insurance can be used to pay estate taxes, equalize assets passing to children who aren't involved in a family business, or pass leveraged funds to heirs free of estate tax. Proceeds are generally income-tax-free to the beneficiary. And with proper planning, you can ensure proceeds are excluded from your taxable estate. ❖



CHART 7

2015 individual income tax rate schedules

Tax rate		Regular tax brackets			
	Single	Head of household	Married filing jointly or surviving spouse	Married filing separately	
10%	\$ 0 – \$ 9,225	\$ 0 – \$ 13,150	\$ 0 – \$ 18,450	\$ 0 – \$ 9,225	
15%	\$ 9,226 – \$ 37,450	\$ 13,151 – \$ 50,200	\$ 18,451 – \$ 74,900	\$ 9,226 – \$ 37,450	
25%	\$ 37,451 – \$ 90,750	\$ 50,201 – \$ 129,600	\$ 74,901 – \$ 151,200	\$ 37,451 – \$ 75,600	
28%	\$ 90,751 – \$ 189,300	\$ 129,601 – \$ 209,850	\$ 151,201 – \$ 230,450	\$ 75,601 – \$ 115,225	
33%	\$ 189,301 – \$ 411,500	\$ 209,851 – \$ 411,500	\$ 230,451 – \$ 411,500	\$ 115,226 – \$ 205,750	
35%	\$ 411,501 – \$ 413,200	\$ 411,501 – \$ 439,000	\$ 411,501 – \$ 464,850	\$ 205,751 – \$ 232,425	
39.6%	Over \$ 413,200	Over \$ 439,000	Over \$ 464,850	Over \$ 232,425	

Tax rate		AMT brackets			
	Single	Head of household	Married filing jointly or surviving spouse	Married filing separately	
26%	\$ 0 – \$ 185,400	\$ 0 – \$ 185,400	\$ 0 – \$ 185,400	\$ 0 – \$ 92,700	
28%	Over \$ 185,400	Over \$ 185,400	Over \$ 185,400	Over \$ 92,700	

		AMT exemptions			
	Single	Head of household	Married filing jointly or surviving spouse	Married filing separately	
Amount	\$ 53,600	\$ 53,600	\$ 83,400	\$ 41,700	
Phaseout <sup>1</sup>	\$ 119,200 – \$ 333,600	\$ 119,200 – \$ 333,600	\$ 158,900 – \$ 492,500	\$ 79,450 – \$ 246,250	

<sup>1</sup> The AMT income ranges over which the exemption phases out and only a partial exemption is available. The exemption is completely phased out if AMT income exceeds the top of the applicable range.

**Note:** Consult your tax advisor for AMT rates and exemptions for children subject to the “kiddie tax.”

CHART 8

2015 corporate income tax rate schedule

Tax rate	Tax brackets
15%	\$ 0 – \$ 50,000
25%	\$ 50,001 – \$ 75,000
34%	\$ 75,001 – \$ 100,000
39%	\$ 100,001 – \$ 335,000
34%	\$ 335,001 – \$ 10,000,000
35%	\$ 10,000,001 – \$ 15,000,000
38%	\$ 15,000,001 – \$ 18,333,333
35%	Over \$ 18,333,333

**Note:** Personal service corporations are taxed at a flat 35% rate.

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# Taxable vs. nontaxable income: Do you know the difference?

Most taxpayers are well aware that their salaries, bonuses, interest, dividends, capital gains and business income are generally taxable. But many are less certain about other types of income. And whether an item of income is taxable can have a significant impact on your tax strategies for the year. Here are some examples that might help clarify the differences between the two forms of income:

Taxable	Nontaxable
Proceeds from surrendering a life insurance policy that are in excess of the policy's cost	Life insurance proceeds paid to you because of the insured person's death, as long as the policy wasn't turned over to you for a price
Unemployment benefits	Workers' compensation benefits (unless they're part of a retirement package)
Disability insurance income if <i>your employer</i> paid the premiums	Disability insurance income if <i>you</i> paid the premiums
Income from bartering, based on the fair market value of property or services you receive	Cash rebates from a dealer or manufacturer
Punitive damages	Compensatory damages for physical injury or sickness
Fringe benefits you receive in connection with performance of your services (unless you pay fair market value for them)	Statutorily excluded fringe benefits, such as group term-life insurance (up to \$50,000), health insurance, parking and employee discounts
Alimony payments	Child support payments
Rents from personal property (such as equipment), if you're operating the rental activity as a business	Rents from your principal residence or vacation home, as long as you rent it out for fewer than 15 days during the year
Reimbursements or cash advances for lavish or extravagant travel expenses — unless they're reasonable under the circumstances	Travel expense reimbursements or cash advances that meet the requirements of an "accountable plan"
Gambling winnings (including winnings from lotteries, raffles, horse and dog races and casinos), cash prizes, and the fair market value of noncash prizes, such as cars and trips	Gifts and inheritances

Note that this list isn't all-inclusive, and many rules and exceptions apply. So please check with us to find out which of your income is taxable, and what you might do to minimize tax on it.

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