Simpson Thacher

Memorandum

Estate Planning Update

August 16, 2016

Proposed Regulations Would Increase the Gift and Estate Tax Cost of Leaving Family-Controlled Entities to Relatives

The way in which certain closely-held business interests are valued is changing. The Treasury Department and the IRS recently issued new regulations to IRC Section 2704 which, if finalized in their current form, would disregard many restrictions typical to private businesses (such as restrictions on the right to liquidate and redeem) in valuing an interest transferred to a family member. Hence, valuation principles (such as minority interest or lack of marketability discounts) commonly applied in determining the fair market value of a private company would be disregarded in determining value for gift and estate tax purposes, thereby resulting in a value that is arguably higher than fair market value for such purposes.

A hearing on the proposed regulations is scheduled for December 1, 2016, and we anticipate that the new restrictions will not be applicable until some time in 2017. While the timing and precise content of the final regulations is not certain, there may be a limited window before the current valuation rules change. If you have been or are considering a transaction involving a closely-held entity or a family-controlled business that would be impacted by the change in the proposed regulations, we encourage you to contact us to discuss effectuating such transaction before the changes become final.

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