Navigating the Impacts of the PRO Housing Plan and American Housing and Economic Mobility Act on Estate Planning

As estate planning attorneys, it is imperative that we stay ahead of the legislative changes that can significantly impact our clients' strategies. Vice President Kamala Harris' introduction of the Pathways to Remove Obstacles to Housing (PRO Housing) plan, supported by Senator Elizabeth Warren's American Housing and Economic Mobility Act of 2024, signals a transformative shift in both housing policy and the tax landscape. These changes will have profound implications for estate planning, charitable giving, and the financial strategies employed by high-net-worth individuals.

Overview of the PRO Housing Plan and the American Housing and Economic Mobility Act

The American Housing and Economic Mobility Act, spearheaded by Senator Warren (D-Mass.), aims to bolster affordable housing through significant federal investment. This legislation is not just a housing initiative; it also serves as a vehicle for substantial tax reform aimed at addressing income inequality and ensuring that wealthier individuals and corporations contribute more equitably to societal needs. For estate planning professionals, these reforms present both challenges and opportunities to reassess and optimize our clients' estate plans.

Key Legislative Changes and Their Implications

1. **Reduction in Estate and Gift Tax Exemptions:** The Act proposes a dramatic reduction in the federal estate and gift tax exemptions, lowering them from the

current $12.92 million per individual to approximately $3.5 million. This reduction would expand the number of estates subject to federal estate taxes, increasing the need for careful planning. The proposed progressive estate tax rates – 55% on amounts up to $12.92 million, 60% on amounts between $12.92 million and $93 million, and 65% on amounts exceeding $93 million – will require us to revisit our clients' estate structures to ensure tax efficiency and compliance.

2. **Introduction of a Wealth Tax:** The introduction of a wealth tax under this Act targets individuals with net assets exceeding $50 million. The tax rates start at 2% for assets between $50 million and $1 billion and escalate to 6% for those with assets over $1 billion. For clients in this bracket, it's essential to explore strategies that mitigate the impact of this new tax, such as leveraging lifetime gifting, charitable contributions, and trusts.
3. **Changes to Capital Gains Tax Treatment:** The Act proposes that capital gains for individuals earning over $1 million annually be taxed as ordinary income. This change could significantly increase the capital gains tax rate for wealthy individuals, particularly those in the top marginal income tax bracket. Estate planning strategies should consider how to manage these potential increases, possibly through the timing of asset sales or the use of tax-advantaged investment vehicles.
4. **Financial Transaction Tax (FTT):** A new FTT on the trading of stocks, bonds, and derivatives intends to curb market speculation while generating revenue to support affordable housing initiatives. Although the tax is relatively small, it will add up for clients with substantial trading activity, necessitating a review of investment strategies and potential alternatives that minimize exposure to this tax.
5. **Corporate Tax Increases:** The Act also seeks to raise corporate tax rates, particularly for large corporations, potentially affecting clients with significant business interests. These clients may need to adjust their business structures or explore alternative strategies to maintain tax efficiency while complying with the new regulations.
6. **Anti-Tax Avoidance Measures for Trusts:** Specific provisions target the use of trusts for tax avoidance. The Act introduces a 10-year minimum term for grantor retained annuity trusts (GRATs) and removes generation-skipping tax exemptions for certain transfers. Additionally, new provisions under Code Section 2901 would effectively end the use of new grantor trusts by treating them as part

of the estate. Code Section 2705(a) and 2705(b) further limit valuation discounts for family-controlled entities and non-business asset transfers, respectively. These changes will necessitate a thorough review of existing trust structures and the exploration of new strategies to preserve the intended benefits for clients.

Strategic Estate Planning Considerations

Given the breadth of these proposed changes, estate planning attorneys must be proactive in advising clients on strategies to mitigate potential tax liabilities. Key strategies include:

- **Maximizing Annual Exclusion Gifts:** Encouraging clients to fully utilize their annual exclusion gifts can effectively reduce the taxable estate.
- **Gifting and Sale Strategies:** Consider the sale of assets to intentionally defective grantor trusts (IDGTs) or spousal lifetime access trusts (SLATs) to shift appreciation out of the estate.
- **Accelerating Charitable Contributions:** Clients may benefit from accelerating planned charitable contributions through the use of charitable remainder trusts (CRTs) or charitable lead trusts (CLATs), thereby reducing the estate's overall tax burden while fulfilling philanthropic goals.
- **Review and Restructure Trusts:** Given the new restrictions on GRATs, grantor trusts, and valuation discounts, existing trust arrangements should be carefully reviewed and potentially restructured to align with the new legal landscape.

Conclusion

The PRO Housing plan and the accompanying American Housing and Economic Mobility Act represent significant shifts in both housing policy and tax law, with far-reaching implications for estate planning. As estate planning professionals, it is our responsibility to stay informed and provide our clients with strategies that adapt to these changes. By proactively addressing these legislative developments, we can help our clients navigate the complexities of the new tax landscape, preserve their wealth, and achieve their financial and philanthropic objectives.

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