Deal Planning for 23.8-Percent Dividends and Capital Gain

By Robert W. Wood • Wood LLP • San Francisco

The end of calendar 2012 saw many taxpayers scurrying. Some rushed to implement estate and gift tax strategies. Many were operating under the quite reasonable (but quickly proven to be erroneous) assumption that the $5 million exemption would not come back. Congress acted over New Year's weekend to make the allowance permanent, even adding indexing that boosted the number further.

On the corporate and investment front, the end of calendar 2012 saw a decided uptick in compensation paid and deals closing. The impetus was severalfold, but the key was the substantial spike in individual rates. On the corporate pay side of the equation, there was the looming expiration of temporary payroll tax cut.

The temporary payroll tax cut had put significant additional money in the hands of employees, including CEOs. There was therefore a nice incentive to pay wages and bonuses before the end of 2012. The change to individual income tax rates was even more important, with many facing not only the rate hikes but the new 3.8-percent investment tax as well.

This perfect storm of tax increases impacted dividends and deal closings. With the ramp-up in capital gain and dividend rates in 2013, the waning weeks of 2012 saw big dividend paydays. Some companies and their CEOs even saw criticism in the political sector that somehow they were doing something untoward by trying to avoid the 15-percent to 20-percent rate hike plus the 3.8-percent new investment tax!

And while not too many companies and owners had time to get deals closed before New Year's to grab the last vestiges of the historically low 15-percent capital gain rate. Wherever individual rates were important, 2012 was the year to cash out if you could. Many normal deferral mantras fell away in favor of cash today.

Now, with a post-election landscape in which the 3.8-percent investment tax is secure and the regulations explaining it are blooming, corporate and tax planners have a new set of concerns. Watch for a forthcoming issue of THE M&A TAX REPORT to address them.

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