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OCTOBER 2017

EQUIFAX CYBERSECURITY INCIDENT

Equifax has reported a cybersecurity incident potentially impacting 143 million consumers – a number equal to more than 50 percent of the U.S. adult population. Consumer information accessed included names, Social Security numbers, birth dates, and addresses. This breach might allow thieves to use the stolen data to apply for credit using your information, which leads to identify theft. You might want to consider the following steps concerning your personal information.

- Find out if your information might have been exposed. You can do this by entering your last name and the last six digits of your Social Security number at <https://www.equifaxsecurity2017.com>. The site will tell you if you have been affected by the data breach.
- Enroll for a free year of credit monitoring. Whether or not your information was exposed, U.S. Equifax consumers are eligible for a year free at <https://www.equifaxsecurity2017.com/what-can-i-do>. The site will give you a date when you can come back to enroll. After enrolling, you will receive an email from Trusted ID Customer Service to take the final steps in enrolling. To verify your identity, you will be asked questions that are in the public record.

- Contact the nationwide credit reporting companies and review your free credit reports from each of them. You are entitled to a free credit report every 12 months from each of the three major consumer reporting companies (Equifax, Experian, and TransUnion). You can request a copy from <https://www.annualcreditreport.com/index.action>.
- Monitor your accounts for any unusual activity. Accounts on your credit reports that you did not open, incorrect personal information on your credit reports, and credit inquiries from companies you have never contacted are all potential signs of fraud or identity theft.
- Consider placing a credit freeze. Placing a freeze on your reports makes it more difficult for a thief to open a new account in your name. Remember that a credit freeze cannot prevent a thief from making changes to your existing accounts. Contact each of the nationwide credit reporting companies. You will need to supply your name, address, date of birth, Social Security number, and other personal information.

Fees vary based on where you live, but commonly range from \$5 to \$10.

(Continued on reverse)

Equifax — 1-800-349-9960

Experian — 1-888-397-3742

TransUnion — 1-888-909-8872

- Consider placing a fraud alert on your Credit. This requires creditors to verify your identity before issuing a credit card, opening a new account or increasing a credit limit on an existing account. A fraud alert will not prevent a lender from opening credit in your name the same way a freeze does, but it does require lenders to take additional steps to verify your identity first.

More information can be found at <https://www.consumer.ftc.gov/articles/0497-credit-freeze-faqs#difference>.

In addition to the suggestions above, be extremely cautious of scam phone calls and emails that claim they are “protecting you from the Equifax breach”. These could be criminals phishing for personal information or enticing you to click virus-infected links. If it looks and feels suspicious, verify the source or sender before proceeding.

The above information was obtained from Federal Trade Commission Consumer Information and Equifax.

PRIVACY IN WILLS AND LIVING TRUSTS

The accompanying *Tax & Business Alert* includes on page 2 an article concerning Wills and Living Trusts. The subject is, of course, complex and cannot be discussed thoroughly in the space available. However, any comparison between Wills and Living Trusts should probably include mention of privacy. Probate proceedings for Wills in Louisiana include a requirement for valuing the transferred assets, and a list of all assets and their assigned values becomes public record. The transfer of assets through the use of a

Living Trust avoids these probate requirements. A list of the assets transferred to the Living Trust and their values are not disclosed in the transfer transaction documents. In the absence of a dispute between the Trustee and/or the beneficiaries, the Trust and the transfer of the assets and their values remain private between the Trustee and the beneficiaries.

We will be pleased to discuss any questions you might have concerning these very different methods of transferring property.

IMMEDIATE DEDUCTION FOR BUSINESS CAPITAL EXPENDITURES

President Trump’s recent tax proposal outline includes the immediate deduction of the cost of equipment and other capital expenditures for the next five years. While we do not know when or if this proposal might become law, the current law already allows significant deductions in the purchase year for such items. Current law allows the following:

Bonus Depreciation. Half of the cost of qualified new business property (used property

does not qualify) purchased in 2017 is deductible in 2017.

Section 179 Deduction. Qualified business property (both new and used property) purchased in 2017, up to \$500,000, can be deducted in 2017. This deduction, however, is limited if more than \$2,000,000 of fixed assets are purchased in the year. Also, the current year deduction is limited to your aggregate taxable business income for the year.

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Tax & Business Alert

OCTOBER 2017

HOW TO STEER CLEAR OF TAX ISSUES RELATED TO SHAREHOLDER LOANS

Owners occasionally need to borrow funds from their businesses. If your business is structured as a corporation and it has extra cash on hand, a shareholder loan can be a convenient and low-cost option — but it's important to treat the transaction as a bona fide loan. If you don't, the IRS may claim you received a taxable dividend or compensation payment rather than a loan.

TAKING A CLOSER LOOK

A corporation can make de minimis loans of \$10,000 or less to shareholders without paying interest. But, if all of the loans from the corporation to a shareholder add up to more than \$10,000, the advances may be subject to a complicated set of below-market interest rules *unless* you charge what the IRS considers an "adequate" rate of interest. Each month the IRS publishes its applicable federal rates (AFRs), which vary depending on the term of the loan.

Right now, although interest rates are starting to rise, they're still near historic lows, making it a good time to borrow money. For example, in July 2017, the adjusted AFR for short-term loans (of not more than three years) was only 1.22% (up from 0.71% in July 2016). The rate was 1.89% (up from 1.43% in July 2016) for midterm loans (with terms ranging from more than three years to not more than nine years).

The AFRs are typically below what a bank would charge. As long as the corporation charged interest at the AFR (or higher), the loan would be exempt from the complicated below-market interest rules the IRS imposes.

The interest rate for a demand loan — which is payable whenever the corporation wants to collect it — isn't fixed when the loan is set up. Instead it varies depending

on market conditions. So, calculating the correct AFR for a demand loan is more complicated than it is for a term loan. In general, it's easier to administer a shareholder loan with a prescribed term than a demand note.



STAYING UNDER MARKET

If a corporation lends money to a shareholder at an interest rate that's below the AFR, the IRS requires it to impute interest using the below-market interest rules. These calculations can be complicated. The amount of incremental imputed interest (beyond what the corporation already charges the shareholder) depends on when the loan was set up and whether it's a demand or term loan. There are also tax consequences for this imputed interest to both the corporation and the shareholder.

Additionally, the IRS may argue that the loan should be reclassified as either a dividend or additional compensation. The corporation may deduct the latter, but it will also be subject to payroll taxes. Both dividends and additional compensation would be taxable income to the shareholder personally, however.

MAKING IT BONA FIDE

When deciding whether payments made to shareholders qualify as bona fide loans, the IRS considers a variety of factors. It assesses the size of the loan, as well as the corporation's history of earnings, dividend payments and loan repayments. It also looks at the shareholder's ability to repay the loan and power to make corporate decisions.

WILLS AND LIVING TRUSTS: ESTATE PLANNING IMPERATIVES

Well-crafted, up-to-date estate planning documents are an imperative for everyone. They also can help ease the burdens on your family during a difficult time. Two important examples: wills and living trusts.



THE WILL

A will is a legal document that arranges for the distribution of your property after you die and allows you to designate a guardian for minor children or other dependents. It should name the executor or personal representative who'll be responsible for overseeing your estate as it goes through probate. (Probate is the court-supervised process of paying any debts and taxes and distributing

your property after you die.) To be valid, a will must meet the legal requirements in your state.

If you die without a will (that is, "intestate"), the state will appoint an administrator to determine how to distribute your property based on state law. The administrator also will decide who will assume guardianship of any minor children or other dependents. Bottom line? Your assets may be distributed — and your dependents provided for — in ways that differ from what you would have wanted.

GETTING STARTED

Under the right circumstances, a shareholder loan could be a smart tax planning move to make this year. Contact our firm to help you set up and monitor your shareholder loans to ensure compliance with the IRS rules. ■

Because probate can be time-consuming, expensive and public, you may prefer to avoid it. A living trust can help. It's a legal entity to which you, as the grantor, transfer title to your property. During your life, you can act as the trustee, maintaining control over the property in the trust. On your death, the person (such as a family member or advisor) or institution (such as a bank or trust company)

THE LIVING TRUST

THE LIVING TRUST

deposited. (If your tax liability is less than \$2,500, you can pay it in full with a timely filed return.) If you deposited the tax for the quarter in full and on time, you have until November 10 to file the return.

TAX CALENDAR

October 16

Personal returns that received an automatic six-month extension must be filed today and any tax, interest and penalties due must be paid.

- The Financial Crimes Enforcement Network (FinCEN) Form 114, "Report of Foreign Bank and Financial Accounts (FBAR)," must be filed by today, if it hasn't been filed already, for offshore bank account reporting. (This report received an automatic extension to today if not filed by the original due date of April 18.)
- If a six-month extension was obtained, calendar-year C corporations should file their 2016 Form 1120 by this date.
- If the monthly deposit rule applies, employers must deposit the tax for payments in September for Social Security, Medicare, withheld income tax and nonpayroll withholding.

October 31

The third quarter Form 941 ("Employer's Quarterly Federal Tax Return") is due today and any undeposited tax must be

deposited. (If your tax liability is less than \$2,500, you can pay it in full with a timely filed return.) If you deposited the tax for the quarter in full and on time, you have until November 10 to file the return.

- If you have employees, a federal unemployment tax (FUTA) deposit is due if the FUTA liability through September exceeds \$500.

November 15

If the monthly deposit rule applies, employers must deposit the tax for payments in October for Social Security, Medicare, withheld income tax, and nonpayroll withholding.

December 15

Calendar-year corporations must deposit the fourth installment of estimated income tax for 2017.

- If the monthly deposit rule applies, employers must deposit the tax for payments in November for Social Security, Medicare, withheld income tax and nonpayroll withholding.

you've named as the successor trustee distributes the trust assets to the beneficiaries you've named.

Assets held in a living trust avoid probate — with very limited exceptions. Another benefit is that the successor trustee can take over management of the trust assets should you become incapacitated.

Having a living trust doesn't eliminate the need for a will. For example, you can't name a guardian for minor children or other dependents in a trust. However, a "pour over" will can direct that assets you own outside the living trust be transferred to it on your death.

OTHER DOCUMENTS

There are other documents that can complement a will and living trust. A "letter of instruction," for example, provides information that your family will need after

your death. In it, you can express your desires for the memorial service, as well as the contact information for your employer, accountant and any other important advisors. (Note: It's not a legal document.)

Also consider powers of attorney. A *durable power of attorney* for property allows you to appoint someone to act on your behalf on financial matters should you become incapacitated. A *power of attorney for health care* covers medical decisions and also takes effect if you become incapacitated. The person to whom you've transferred this power — your health care agent — can make medical decisions on your behalf.

FOUNDATIONAL ELEMENTS

These are just a few of the foundational elements of a strong estate plan. We can work with you and your attorney to address the tax issues involved. ■

SHOULD YOU CHANGE YOUR BUSINESS — OR TRANSFORM IT?

As its market and technological needs evolve, every company needs to change. There's even a formal term for the undertaking: "change management." From an operational standpoint, change involves opening up the hood and switching out old engine parts for new ones. Even if it affects the business as a whole, change means focusing on specific areas and making alterations over relatively short periods.



At some point in the existence of many companies, the organization needs to go beyond change to transformation. This is much different. Business transformations aren't so much about switching out

parts as overhauling the entire engine, possibly modifying the frame and even applying a new coat of paint. Let's look a little more closely at the distinction.

REINVENT YOURSELF

Say a large commercial construction company was having trouble meeting its sales goals because of environmental regulations. So, it decided to augment its sales teams with environmental engineers who could better assess the compliance impact. The company applied change management principles — such as building a case for the idea and adjusting its business culture — and was successful. This was no doubt an important *change*, but the business itself wasn't *transformed*.

The objective of a true transformation is to essentially reinvent the company and implement a new business

model. And that model needs to be a carefully, formally devised chain of interlocking strategic initiatives that apply to the entire organization.

Perhaps the most obvious and universal example of a business transformation is Apple. The technology giant, once a head-to-head competitor with IBM on the personal computer market, found itself struggling in the 1990s. So, under the tutelage of the late Steve Jobs, it transformed itself into a mobile technology company. It still makes computers, of course, but the company's *transformative* success can really be attributed to its mobile devices and operating systems.

THINK AND ACT WISELY

Every business transformation differs based on the history, nature and size of the company in question. But there are best practices to keep in mind. For example, start with your customers, visualizing what they need (even if they don't know it yet). Also, build a chain of initiatives, so you're not trying to do everything all at once. And use metrics, so you can track specific dollar amounts and productivity goals throughout the transformation.

Above all, be ready for anything. Even the best-planned transformations can produce unpredictable results. So keep expectations in line and take a measured, patient approach to every initiative involved.

BRING ALONG HELP

Successful business transformations can be spectacular and profitable. But, make no mistake, the risk level is high. So if you decide to embark on this journey, bring along your trusted financial, legal and strategic advisors. ■

3 STRATEGIES FOR HANDLING ESTIMATED TAX PAYMENTS

In today's economy, many individuals are self-employed. Others generate income from interest, rent or dividends. If these circumstances sound familiar, you might be at risk of penalties if you don't pay enough tax during the year through estimated tax payments and withholding. Here are three strategies to help avoid underpayment penalties:

1. 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 the year,
- 110% of your tax for the previous year, or
- 100% of your tax for the previous year if your adjusted gross income for the previous year was \$150,000 or less (\$75,000 or less if married filing separately).

2. Use the annualized income installment method. This method often benefits taxpayers who have large variability in income by month due to bonuses, investment gains and losses, or seasonal

income — especially if it's skewed toward year end. Annualizing calculates the tax due based on income, gains, losses and deductions through each "quarterly" estimated tax period.

3. Estimate your tax liability and increase withholding. If, as year end approaches, you determine you've underpaid, consider having the tax shortfall withheld from your salary or year-end bonus by December 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 trigger penalties for earlier quarters.



Finally, beware that you also could 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. Please contact us for help with this tricky tax task. ■