

Welcome

DEAR READER,

The accumulation of wealth can be marked by the successful navigation through a number of pivotal moments individuals may experience during their lifetime. While planning for these moments is essential, the unpredictability in recent years related to tax policy changes has caused inertia around some aspects of pivotal planning, presenting potential roadblocks for identifying the appropriate path forward. Some of the uncertainty of impending tax legislation seems to have been wiped away with the passing of the Inflation Reduction Act, leaving many high net worth individual taxpayers with minor changes to their tax landscape. This new relative certainty in our tax laws may help as you to continue to advance those goals important to you, your family, and your business. Welcome to this year's 2023 Essential tax and wealth planning guide where we explore pivotal moments that family enterprises may encounter on their journey.

In our recent perspective article, we followed Tom and his family as they approach planning for their family enterprise. In this year's Guide, we continue to explore how a family can plan for some of those inevitable events and identify the potential opportunities that can help shape the future of a family's wealth.

- **Tax policy:** Explore more about where tax legislation may go next as we approach the mid-term election cycle.
- **Post-mortem considerations, keeping a complex process focused:** Learn through the passing of Tom, our founder of the family business, how settling an estate can be quite an extensive exercise, including exploring those factors that may complicate or simplify the process.

• Family enterprise pivotal moments series: Many family enterprises are unique, crafted over time, and highly valued. They are defined by a series of pivotal moments—potential opportunities to grow, evolve, or transform—and preparation is essential for fully seizing those opportunities.

As we look forward to the 2023 tax year, we would like to remind you to continue to press forward with your planning. The 2017 Tax Cuts and Jobs Act has many provisions that expire at the end of 2025. While we have some level of certainty in our tax landscape, it is important to understand the pivotal moments facing you, your family, and your business and find your path forward.

To find a member of the Deloitte Private Wealth practice who specializes in your area of interest, please contact us at <u>ustaxprivatewealth@deloitte.com</u>.

Regards

Wendy Diamond

Private Wealth Tax Leader Deloitte Tax LLP







Legislative outlook: Government funding is job #1, but year-end tax package is possible

The House and Senate enter the closing days of the 117th Congress having wrapped up work on the Inflation Reduction Act, the roughly \$745 billion tax-and-spending plan that was signed into law in August.

The tax provisions in the new law focus heavily on the corporate side of the tax code, although it is worth noting that there is a two-year extension of the rules under section 461(l), which disallow certain business losses for noncorporate taxpayers. The measure also includes roughly \$80 billion in new funds that will be available to the Internal Revenue Service over 10 years, with much of that amount set to be allocated to strengthening tax collection and enforcement efforts focused on wealthy individuals and large corporations as part of the Service's overarching goal of narrowing the "tax gap"—the difference between the amount of taxes owed to the federal government and the

amount paid and collected on a timely basis. The new funding is expected to be directed largely to modernizing information technology, improving data analytic approaches, and hiring and training agents dedicated to auditing highly complex returns involving sophisticated tax transactions.

"Lame duck" government funding measure could include tax provisions

Congress's chief goal now is to keep the government's doors open for fiscal year 2023. The House and Senate were unable to agree on a unified spending plan in time for the start of the new fiscal year on October 1, so they instead adopted a short-term continuing resolution that funds the government at fiscal year 2022 levels through mid-December. Lawmakers are expected to approve a more durable funding agreement during a "lame duck" legislative session after November's midterm congressional elections.









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But tax policy could also be on the agenda during the lame duck as lawmakers seek to use the year-end funding bill as an opportunity to advance assorted tax-relief proposals that fell through the legislative cracks over the past year and possibly enact an additional round of retirement security reforms. Any agreement on tax issues likely would be combined with the government funding measures into an omnibus legislative package.

SALT cap relief: Congressional Democrats representing jurisdictions with high local income and property taxes may well resume their longstanding efforts to eliminate or relax the current-law \$10,000 cap on the deduction for state and local taxes (SALT), which was enacted in the Tax Cuts and Jobs Act (TCJA) and is scheduled to expire after 2025.

The Build Back Better legislation that the House approved last November called for temporarily increasing the cap on the deduction to \$80,000; however, that provision proved to be problematic for some Democrats in the Senate (who believed that it would primarily benefit wealthier taxpayers) and it emerged as one of many points of contention that kept Build Back Better legislation from advancing in that chamber. Although members of what has become known as the "SALT Caucus" had vowed this summer that they would

block the Inflation Reduction Act (the successor legislation to Build Back Better) if it did not include a similar provision, they ultimately backed down from that position and SALT cap relief was left out of the enacted measure.

Retirement security: There is bipartisan, bicameral support for enacting another round of retirement security protections that would build on 2019's SECURE Act, particularly in light of the fact that two prominent boosters of retirement legislation—House Ways and Means Committee ranking member Kevin Brady, R-Texas, and Senate Finance Committee member Rob Portman, R-Ohio—did not seek re-election this year and will leave Capitol Hill when the 117th Congress expires.

The House overwhelmingly approved a bipartisan "SECURE 2.0" bill this past March. (For prior coverage, see *Tax News & Views*, Vol. 23, No. 13, Apr. 1, 2022.) The Senate Finance Committee unanimously cleared its version of a SECURE 2.0 measure in June. (For prior coverage, see *Tax News & Views*, Vol. 23, No. 22, June 24, 2022.) Finance Committee Chairman Ron Wyden, D-Ore., and ranking member Mike Crapo, R-Idaho, formally introduced that proposal in the Senate on September 8. (*Legislative text* and a *section-by-section summary* are available from the Finance Committee staff.)



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Both bills include provisions that, broadly speaking, are aimed at making it easier for businesses to offer tax-qualified retirement savings plans to their employees and for individuals to participate in retirement plans and grow their tax-preferred savings. The Joint Committee on Taxation staff estimates that both bills would generate relatively modest increases in federal receipts over the 10-year budget window, primarily by offsetting forgone revenue with provisions that would make certain retirement accounts and retirement account contributions subject to after-tax "Roth" treatment.

Other possible tax provisions: Lawmakers also could push for passage of several targeted business tax provisions that, among other things, would: reverse (or relax) certain TCJA changes related to the treatment of research expenditures, the interest expense limitation, and bonus depreciation; provide relief from more stringent 1099 reporting requirements for so-called third-party payment processors that were enacted in the American Rescue Plan in 2021 and took effect this year; modify the last-in-first out (LIFO) inventory recapture rules to assist car dealers impacted by recent supply chain issues; renew a handful of expired and expiring tax "extenders" provisions; and make so-called tax "technical corrections" to both the Tax Cuts and Jobs Act and the Inflation Reduction Act.



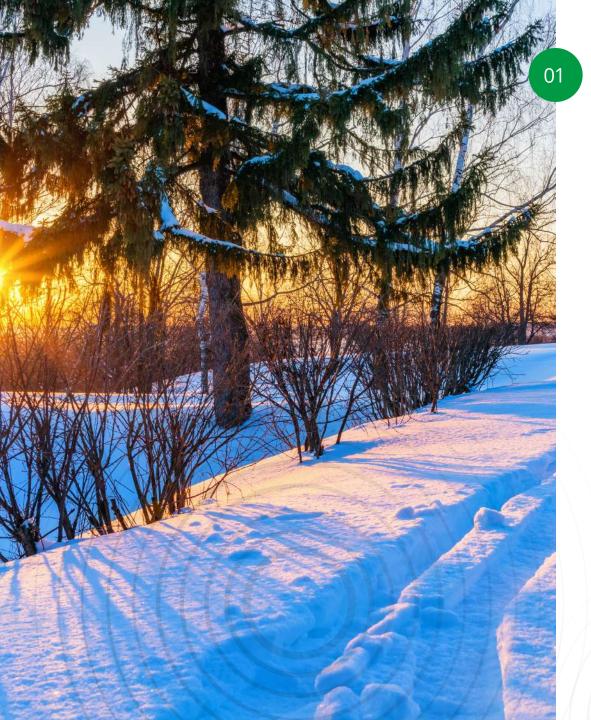












Legislative outlook: Government funding is job #1, but year-end tax package is possible

Midterm results will determine how much gets done

The breadth of a potential lame duck bill is currently unclear. The election results will play a significant role in setting expectations for what can happen in a year-end legislative session since each party's appetite for striking a deal will depend in large part on how they perceive their relative power both before and after the 118th Congress officially convenes next January.

Moreover, to the extent a deal is possible, the wide range of issues in play could make for complex and difficult negotiations, and lawmakers would need to be careful to avoid producing a bill so big that it collapses under its own weight.

Find out more

For continuing coverage of tax legislative developments, see *Tax News & Views* from Deloitte Tax LLP.



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POST-MORTEM

Keeping a complex process focused

Company founders often provide the vision and glue that holds a company together. When Tom started his first grocery store in the 1970s, he knew that he wanted to promote locally grown food. He researched and nurtured his vision to grow the organic food market, which ultimately led to his successful chain of organic grocery stores. However, the recent growth and store expansion did not leave him with time to plan for the future leadership succession of his company. So, when Tom, a widower, suddenly died, he still owned a 90% interest in the partnership that held the stores, with his two children owning only 2.5% each and 5% owned by a dynasty trust. The children were left with not only the emotional blow of losing their father, but now also the financial and administrative responsibilities of their father's estate along with planning for the future of the company.

For such a pivotal moment for a family enterprise, in an ideal world, wealthy individuals have prepared for their family's future by leaving a well-constructed estate plan. But, in the real

world, some estate plans remain a work in progress for reasons ranging from evolving legislation and complexity to family conflict and indecision. Consequently, post-mortem planning is inevitable; it is merely reduced in scope and complexity where lifetime actions are taken. The more comprehensive the estate plan during life, the fewer actions and decisions that must be taken by executors, trustees, and post-mortem advisors.

For the families and beneficiaries of high-net-worth individuals, settling an estate can be quite extensive, beginning with the process of gathering and determining the value of assets and ending—often many years later—with the distribution of assets. The period in between, called the post-mortem administrative period, often gives rise to complex tax, financial, and other considerations.

Every high-net-worth estate is unique. The type and level of activities required for settling the estate will depend on a host of factors, including the nature













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of assets and the state of planning that existed at the time of death. For example, the approach for an individual who dies intestate (i.e., without a will or other testamentary declaration) will be very different than the approach for someone who dies with a family office and a private trust company in place. By analogy, an estate's administration is much like playing a hand of cards—much depends on what cards you have been dealt.

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An effective post-mortem administration responds to the estate's unique mix of assets, liabilities, family considerations, and philanthropic directives. A little flexibility and, where necessary, thinking outside of the box can be beneficial to those winding up the decedent's affairs. This article offers a sense of what to expect during the post-mortem administrative period, including the factors that may complicate or simplify it.

What can the family expect to happen during the post-mortem administrative period?

Many activities take place during the post-mortem administrative period, including possibly establishing new trust vehicles and/or new philanthropic vehicles. Therefore, this period often lasts much longer than the estate's beneficiaries expect. There are typically three stages of post-mortem activity.

First, the executor of the estate, should develop a snapshot of the decedent's financial position as of his date of death. Then, the executor must segregate the income and expenses from those assets between activity before death, which is attributable to the final income tax return, and after death, which is attributable to a new legal entity—the estate. The estate then opens its own set of books and maintains these throughout the post-mortem period. Before the estate can pass assets to its beneficiaries, it must satisfy two other groups who have claim to the assets: creditors and tax authorities. Therefore, for Tom's executor, the first stage of post-mortem administration, involves gathering a list of his assets, identifying and satisfying liabilities, and developing the team of advisors who will assist with the timely filing of estate and income tax returns. The executor and beneficiaries also need to make certain decisions that will help them manage the process and make certain tax elections that affect subsequent tax matters.











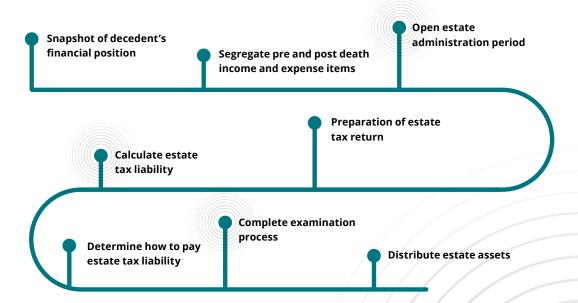
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The second stage involves calculating the estate tax and preparing for its payment. Completing the estate tax return can be a considerable task because of the extensive disclosure requirements. It is even more complicated in situations like Tom's death, when pre-death planning was haphazard or outdated, or if the estate is involved in legal controversies. Considering the high likelihood of IRS examination, the family should consider hiring qualified appraisers to assist in determining the value of assets. Generally, these appraisals will contemplate discounts for lack of control or lack of marketability. Unfortunately, Tom died owning a 90% interest in his partnership, which will likely result in an inflated value of the partnership on his estate tax return, since the value may not be discounted. Ultimately, the estate tax is assessed at forty percent of the taxable estate and is due nine months after date of death. The process of raising cash for paying the estate tax liability often involves considerable time and effort, particularly if it requires selling assets or borrowing funds.

Once the examination process has been completed, the taxes are paid, and there are no outstanding obligations or controversies, the estate will be distributed according to the decedent's testamentary documents as modified by the post-mortem actions that may be taken by the beneficiaries—for example, disclaimers of bequests, etc. Because the liquidation of an estate often occurs years after the date of death, the termination of the estate itself also often gives rise to complicated income tax issues. Without planning in

advance, Tom's children may face challenges with these tasks and should seek professional assistance. Additionally, for both themselves and any other heirs, they should be realistic about the timing for disbursement of the assets. In particular, if they do not intend to continue to operate the business themselves, then they will face the additional burden of preparing it for sale.



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How long does it typically take to settle an estate, and what, if anything, can the family do to expedite the post-mortem process?

For very high-net-worth individuals, in our experience, the post-mortem period can range from three to ten or more years, with the average estate taking approximately five years to settle. The administration of an estate is an organic process that will follow a course of its own, and there is little the beneficiaries can do to influence the timing in a significant way. One important thing a family can do to limit settlement time and costs is to move quickly to develop a complete picture of the decedent's assets and his or her intentions with respect to those assets. Survivors also can influence the duration of the estate by mitigating any controversies before they proceed to court and by planning at an early date, how to fund liabilities, expenses, and taxes.

What are some typical U.S. income and estate tax concerns during the administrative process for an estate?

After death, the income tax landscape for the decedent becomes more difficult. At a minimum, the executor/trustee may be responsible for filing:

- Final income tax return (Form 1040),
- Final gift tax return (Form 709)
- Estate tax return (Form 706),

- Estate's income tax returns (Form 1041),
- **Trust income tax returns** (Form 1041) for trusts (e.g., Tom's dynasty trust) which were not recognized as separate taxpayers during the decedent's life,
- Potential state income or state estate/inheritance tax filings and/or
- Potential foreign filing obligations

The estate will continue to file income tax returns for each year of the post-mortem administrative period. Eventually, the estate will terminate, and some tax filings will cease as assets are distributed to beneficiaries. The complexity of filing obligations is often underestimated by the executors, which may require professional consultation.

As the executors complete the final income tax returns, they should consider planning for any tax attributes which might expire at death. For example, due to the expansion of the business, Tom had an excess business loss (EBL) in 2021 which created a net operating loss (NOL) that was carried forward into 2022. After the death of a taxpayer, both an NOL and any capital loss carryforwards expire. An NOL carryover sustained by a decedent before death does not pass to the decedent's estate, to the beneficiaries under a will, or to



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the heirs at law, since the decedent and the decedent's estate are different taxpayers for tax purposes. If the decedent was married at death, then the executor may determine the portion of the NOL generated by the decedent versus the surviving spouse. However, Tom was not married at the time of his death. Therefore, any part of an NOL that cannot be deducted on Tom's final income tax return is extinguished for all subsequent taxable years.

It is important to consider the impact of Tom's death on all entities that he owned. For example, the death of a partner also affects the income tax filings for the partnership itself, because the partnership closes its year with respect to the partner. Thus, tax attributes in the year of death are allocated (by any reasonable method including a formal closing of the books) between the partner and the estate. There may be other implications which should be discussed with a professional advisor.

What are the alternatives for paying estate tax liabilities?

As stated previously, generally the estate tax is due nine months from date of death. For many high-net-worth estates, one of the specific considerations in the final phase of post-mortem administration is planning how to pay the estate tax liability. Unless the estate has earmarked cash for this purpose, it usually has two choices: borrow funds to pay the taxes or sell assets to generate cash. There is no expectation that the executor liquidate all assets

immediately to pay the liability. Additionally, the executor may file certain elections to defer the tax.

If the estate chooses to borrow funds to pay the tax, often the financing will come from the business. While cash flow from the business can be used over time to pay off the estate tax liability, that may be the biggest cash outflow that the business will ever experience and may potentially result in significantly reduced working capital. Therefore, any plan to utilize cash flow from the business must be carefully examined to determine the impact on the future of the company.

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Another option for borrowing funds, particularly for high-net-worth families, is to borrow from a related party at market rates, with the interest payments indirectly benefitting family members. Because greater care must be exercised when borrowing directly from a beneficiary, it is more common to borrow from a life insurance trust, from a closely held business, or against real estate. The interest paid to third parties can, if properly structured and documented, be considered a cost of administration that is deductible in determining the estate tax liability, thus decreasing the effective interest rate actually paid. In many cases, families use a combination of sources—government, banks, and related parties—to meet the tax obligations.

If the executor affirmatively elects to defer the tax related to a closely held business, and certain qualifications are met, then, pursuant to section 6166, the estate is allowed to pay off the tax liability apportioned to the business over a period of up to 15 years, at reduced interest rates. However, the government may require the estate to bond for the outstanding liability and has become more assertive in applying liens to estate assets, thus potentially making this avenue more expensive for business owners.

The other alternative, selling assets, also can require careful planning. Sales arising from buy/sell or other owners' agreements can be particularly troubling since the terms of many such agreements, while legally binding,

are not necessarily binding for estate tax purposes. Sales proceeds generated through corporate and partnership redemptions are subject to special income tax rules. Some sales transactions can give rise to ordinary income treatment where other options might have permitted capital-gain treatment. Similarly, sales transactions that give rise to losses may complicate the future administration of the trust because losses, unless utilized during the administrative period, generally are suspended until the termination of the estate. Finally, if there are to be excess sales proceeds not needed to pay taxes, liabilities, or the expenses of administration, it may be prudent to retain accounting and investment advisory specialists.

How does the presence of a family business affect the administrative process?

In situations where the ownership of the family business is shared with many beneficiaries, there are frequently issues involving control over the business and its future governance. In Tom's case, his two children only owned 2.5% each of the partnership, but only one of the children was actively involved in the day-to-day business operations. However, Tom's estate plan distributed ownership equally between both of them, which has left them and the family enterprise to struggle with issues such as ongoing roles/responsibilities, control, voting rights, family employment, and the business strategy for the future.

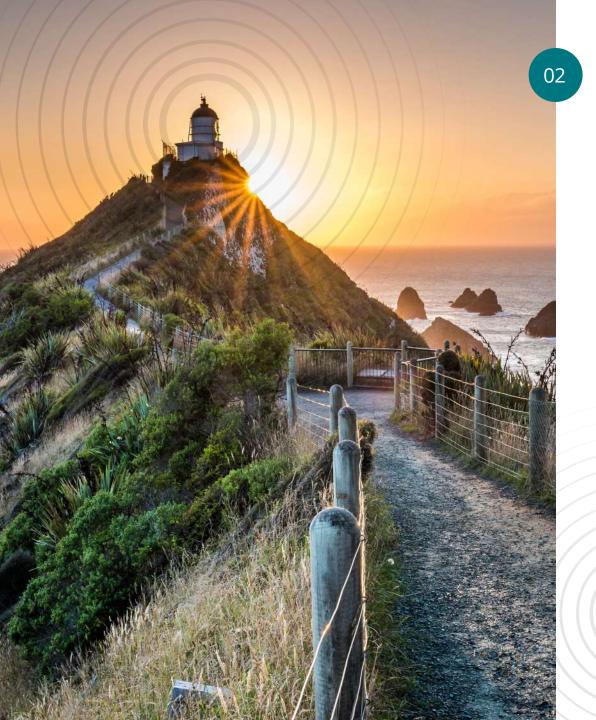












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Keeping a complex process focused

Essential role of pre-mortem planning

Dealing with death in any circumstances presents emotional, financial, administrative and other burdens. Indeed, the sheer weight of anticipating these issues often makes people hesitant to plan. However, it also makes it essential to do so. From a tax perspective, planning in advance allows the individual to model out the transference of assets to the intended recipients and understand the timing and economic considerations. For a business owner, it allows for peace of mind about how payment of the related estate tax may impact the company and develop a plan to mitigate unintended consequences. Non-tax issues such as family governance of a closely held business can also be discussed openly so that everyone shares in a vision for the future. Ask yourself this question—what will be one's legacy? Ultimately, planning for such a pivotal moment—one's death—both personally and/or financially, can help mitigate the burden on those for whom you care about and creates a path forward.













PIVOTAL MOMENTS

Pivotal moments for family enterprises

Like a great work of art, family enterprises are unique, crafted over time, and highly valued. While no two family enterprises are the same, they are united by a series of pivotal moments—opportunities to grow, evolve, or transform—and preparation is essential for fully seizing those opportunities. Through the **pivotal moments series** we explore eight foundational elements that can help shape the family enterprise.

In the second chapter of this year's Guide we discussed one such pivotal moment in the life of any family or family enterprise, the death of the founder. We explored all those activities that must be undertaken before the wealth of the decedent passes to the next generation. While the death of a family member is certainly a pivotal event in the history of any family, it may be more complex when the largest asset of the decedent's estate is the family business.

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Pivotal moments for family enterprises

Beyond that generational shift of wealth, there are many other pivotal moments that the family and their enterprises will likely encounter. The way in which they approach these moments will shape the family enterprise for generations to come. In this series we focus on those pivotal moments that shape the future of a family's wealth.

Family enterprises include the interests of the family, operating business, and family office, as well as non-family member management and employees. Through a purpose-driven approach, family enterprises can guide themselves to a future consistent with the values and vision essential for a thriving and sustainable legacy of multi-generational success.



PIVOTAL MOMENTS

Pivotal moments for family enterprises

The art of governance

The first article in the pivotal moments series explores how a strong foundation of governance can help family enterprises make decisions in the various areas they encounter during the operation of the business. With an informed perspective, enterprising families can unleash the shared vision and values that inspired their business in the first place.

Every family enterprise faces pivotal moments that can alter the course of their business, from leadership transitions to external market forces beyond the team's control. Maneuvering through these challenges, mitigating risks along the way, and embracing new opportunities are at the core of a carefully designed and implemented governance model. Family enterprises that aspire to reach this objective can channel the same entrepreneurial energy that helped them build enduring, multigenerational enterprises and business portfolios. A strong foundation of governance can help family enterprises make decisions in areas including capital needs, technology, leadership transitions, and incentive planning.

One of the first steps is to understand that as families grow, so too, does complexity. Governance helps family leaders anticipate and address challenges by bringing greater discipline, transparency, and accountability to the issues that matter most. Additionally, there is no one form of governance

that suits all family enterprises. There are multiple governance forums to explore—Shareholder of Owner's Council, Family Councils, Family Boards, etc. Exploring a series of question helps the family ascertain what suits them when considering establishing or refining a governance model.

The art of governance

- 1. Does our family have a forum to meet regularly to discuss matters of importance?
- 2. Do we have the right board composition?
- 3. Which types of governance structures and practices best serve us today?
- 4. Does our governance model consider the alignment between the short- and long-term needs of both the family and the enterprise?











PIVOTAL MOMENTS

Pivotal moments for family enterprises

Assessing capital needs

For the forward-looking family enterprise, opportunities abound. Whether diversifying into new industries, expanding existing lines of business, or adopting the latest technology, growth opportunities will likely present themselves. And, when they do, additional capital might be needed. Family dynamics can have a big influence on what requires additional capital, when it's needed, and how it's accessed and deployed. As discussed previously, establishing a formalized governance structure prompts the business to align on the "what," "when," and "how" in advance. Not only can this prepare the business to seize new opportunities with confidence and agility, but it helps ensure the needs of the business are balanced with those of family members.

In the past, family enterprises had few options for accessing capital. As a result, they largely relied on traditional commercial banks. Unfortunately, many commercial banks often took a conservative stance and restricted how funds could be used, thereby limiting what a family enterprise could achieve. While the debt markets have evolved to include new, nontraditional lenders, many family enterprises are not aware of these options.

The proliferation of capital solutions may be good news for family enterprises, as it affords them greater creative license; however, proper timing is an important consideration for these options, as both internal and external factors play a role. This is where a capital needs assessment can help. It can

help the business and the family leaders determine their capital-raising goals and priorities, assess optimal timing, and explore funding options—in preparation for accessing future capital. To that end, the business should consider thinking through several questions during its normal governance deliberations before deciding on the opportune liquidity option to fuel their capital needs.

Assessing capital needs

Provider cost and flexibility

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Cost of capita	I						
0 to SOFR+400		SOFR+600 to 1,000		12-16%	15-19% 2	25%+	

PIVOTAL MOMENTS

Pivotal moments for family enterprises

The art of family business technology

Many family enterprises have a well-earned reputation for being customer-centric, relationship-driven, and long-term oriented. These attributes can help businesses when it comes to building and maintaining the components to run their IT environments. As technology plays a more important role in driving growth, increasing productivity, and capitalizing on new market opportunities, it's critical to understand that creating a robust technology infrastructure is a multiyear journey that requires sustained investment, strong executive support, engagement with employees, and deep relationships with vendors. This understanding and forward-thinking approach to technology is fundamental for family enterprises to position themselves for the opportunities, or pivotal moments, that may arise.

Maintaining an inventory of technology assets and developing a well-articulated plan for evolving the infrastructure, are essential for ongoing success. There are multiple benefits that can accrue from this approach:

Supports growth: Technology can support the growth aspirations of an organization, improve its engagement with customers, and enhance the value of its brand

Enables expansion: A technology foundation is also useful when considering opportunities that may be presented as the lines between traditional industries and sectors continue to blur

Improves valuation: An appropriate technology infrastructure may increase the intrinsic value of an enterprise

Once the family enterprise is aligned on evolving the technology infrastructure, a key considerations is assessing the state of the enterprise's technology landscape to determine if its existing systems are poised to meet the strategic goals of the business. Whether a family enterprise is in the early stages of evolving its technology stack or is more advanced, collaborating with the right vendors can help ensure it is achieving its technology objectives with solutions such as software as a service, technology packages, or systems integration. For family enterprises that want to modernize their technology infrastructure, one of the first steps is asking some basic questions of the team, vendors, partners, employees, and customers before embarking on the next technology implementation.

The art of family business technology

Your family business is your passion. And stepping back and taking inventory of your family business technology can help take that passion further.

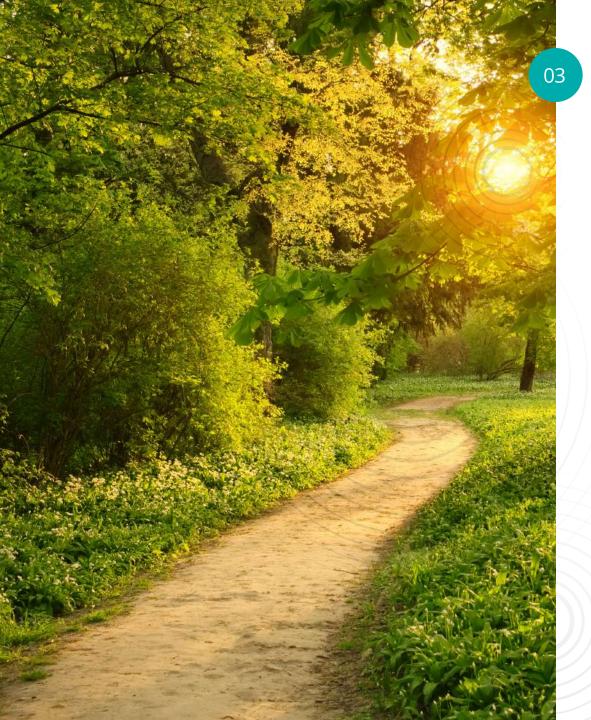












PIVOTAL MOMENTS

Pivotal moments for family enterprises

Upcoming articles in this series

As of the date of this release we have explored the first three of these important moments. Stay tuned as we explore more pivotal moments in the evolution of the family enterprise in future. Future topics will include:

Part four

Long-term incentive planning

Part five

Leadership transitions and the next generation

Part six

Legacy assessment

Part seven

The future of the business

Part eight

Family office creation

Deloitte Private guides family enterprises to thrive across generations by navigating the facets of family, business and ownership. We bring a 360-degree view across the challenges and opportunities faced by a family enterprise. Our purpose-driven approach helps elevate family enterprises, guiding you to a future consistent with the values and vision essential for a thriving and sustainable legacy of multi-generational success.





RESOURCES Useful links





Services



increases to capital gains tax rates







Private Wealth Tax Services



Family Governance and Leadership Services



Tax News & Views Newsletter

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