Trump Tax Returns Call Consulting Fees Into Question

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By Sarah Paez

Practitioners question whether $26 million in “consulting fees” President Trump reportedly claimed for Trump Organization real estate projects — most of them abroad — were legitimate business expenses.

According to a September 27 *New York Times* report that reviewed over two decades of the president’s individual and business tax returns, Trump wrote off $26 million in unexplained consulting fees between 2010 and 2018 for Trump Organization projects. Trump pocketed $5 million and reported $1.1 million in consulting fees for an Azerbaijani hotel deal that ultimately failed, said the report. In a similar deal in Dubai, Trump reported collecting $3 million and wrote off $630,000 in consulting fees.

While the tax records do not specify the recipient of the consulting fees, some tax records match the financial disclosures of the president’s daughter Ivanka Trump, filed in 2017 before she joined the White House staff, the report says. According to those filings, she reported $747,622 in consulting fees received from a company — TTT Consulting LLC — that she co-owned. The *Times* report matches that sum to consulting fees claimed by the Trump Organization as tax deductions for hotel projects in Vancouver, British Columbia, and Hawaii.

At the time, Ivanka Trump was employed as an executive officer of both TTT Consulting and the Trump Organization, which paid her consulting fees. Michael Karlin, a tax lawyer and co-founder of Karlin & Peebles LLP in Los Angeles, told *Tax Notes* that the information reported in the *Times* “really looks terrible to me as a professional tax lawyer.”

Although Karlin would not speculate on why Trump would have compensated his daughter through consulting fees, he said it would be “virtually impossible” for a company that employed Ivanka Trump to treat fees paid to a different company that also employs her as “fees paid for independent services.”

“Compensation paid to employees for services rendered should be treated as employment income, subject to payroll taxes,” Karlin said.

Jeffrey Rubinger, a tax partner and principal of global tax practice at Baker McKenzie in Miami, said there would be no reason for the Trump Organization to pay Ivanka Trump consulting fees if she were an executive. “You would just pay her salary,” he said.

Both Karlin and Rubinger said the large amount of money Ivanka Trump was apparently paid in consulting fees and her commensurately low experience raise questions over whether the fees were legitimate.

Deducting consulting fees from foreign-source income would reduce Trump's taxable income if the expense were considered an "ordinary and necessary" business expense, said Rubinger. Because the payment is a related-party payment, he said, it would have to be an arm's-length amount. Karlin said deductions can be denied by the IRS on the theory that they constitute "unreasonable compensation," but he said he could see arguments under the transfer pricing rules coming into play, because any transaction between two controlled parties engaged in business may be repriced.

Omri Marian, a professor of tax law at the University of California, Irvine, School of Law, said in an email that any related-party transaction is "always suspicious." Because of transfer pricing rules, related parties can classify transactions for tax purposes — or ascribe value to them — in a way that two unrelated parties would not, he said. For example, the payment of fees from one related party to another creates a deduction, whereas a gift is not deductible by the giver and may also create gift tax liability, he said.

The way in which Ivanka Trump received the money has raised questions among practitioners over whether the president paid his daughter consulting fees to avoid paying a 40 percent gift tax on top of the 39.6 percent U.S. federal income tax rate in place before 2018. "It's a bigger issue if [the consulting fee] was really a disguised gift. Because then you're avoiding a second tax, which that's what it seems like it is here," said Rubinger.

A person interviewed by the *Times* who was reportedly involved in developing two Trump Tower projects in Istanbul said the Trump Organization never paid any consultant or other third party in Turkey. However, the *Times* report says tax records show "regular deductions" for consulting fees adding up to $2 million over seven years.

Marian said that information, if true, raises two important questions: "Who got the payment (and what for), [and] why was it deducted? If it was deducted as consulting fees where no consulting took place, this can rise to the level of tax fraud."

Karlin said that in addition to the gift tax issue, the tax returns raise questions about whether the Trump Organization was entitled to deduct the consulting fees if they were excessive.

"I don't know whether the fees were excessive because I don't know what Ivanka Trump did to earn them," Karlin said. "But $26 million buys a lot of consulting for just one person, even over an eight-year period." Supposing Ivanka Trump did 1,000 hours a year of consulting work over eight years, that would work out to about $3,250 per hour, he said, adding, "I seriously doubt that Ms. Trump had time to provide anywhere near that level of service."

If the fees were excessive, said Karlin, they could be characterized as gifts, which cannot be deducted. Even if the gifts were not made by Trump but by entities he controlled (in this case, the Trump Organization), they could still be classified as gifts preceded by deemed distributions to Trump from the entities, he said.

"Overpaying children is a classic method of making tax-deductible disguised gifts, but I don't have the information that would support this in the present case" without further examination of

Ivanka Trump's records, Karlin said.

Thomas A. Cooper of Moore & Van Allen PLLC noted that previous *New York Times* coverage detailed how Fred Trump used a number of methods to push his wealth "downstream" to his children, including his son Donald Trump, mitigating the effects of any gift tax or estate tax. The latest *Times* piece demonstrates Donald Trump's initiatives to maximize the income tax benefits of his own businesses — in one notable case, through the payment of wages and consulting fees to Ivanka — Cooper told *Tax Notes*.

"It is acknowledged that employing family members in a family business provides for the same tax treatment as for unrelated parties, as the opposite result, in the words of Rev. Rul. 73-393, 'would be tantamount to penalizing [a] father for employing his own child,'" Cooper said. "Structuring family member compensation to obtain beneficial tax treatment will ultimately depend on the extent to which the taxpayer desires, or at least is willing, to shift wealth to other family members." But there are certainly other factors that must be considered in planning, Cooper said.

There is a fairly linear spectrum under which income tax benefits and transfer tax benefits enjoy varying degrees of success resulting from different types of compensation, Cooper added. He said taxpayers more focused on wealth transfer may want to compensate their family members in the form of equity in the family business.

Eric Yauch contributed to this article.