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Trusts & Estates Alert: Estate Planning After the Enactment of the Tax Cuts and Jobs Act

By Deborah Pechet Quinan on January 3, 2018

On December 22, 2017, President Trump signed the "Tax Cuts and Jobs Act" into law. The new legislation represents a compromise between House and Senate Republicans on their respective tax overhaul proposals, and is the most significant tax reform legislation to be enacted in over thirty years. Although the inherent complexities of the new legislation, combined with the whirlwind pace of its passage, poses many questions for analysts and tax practitioners alike as they begin to navigate the new tax system, we do have an understanding of what the new law will mean for high net worth individuals interested in advancing their estate planning goals.

Most of the provisions of the Tax Cuts and Jobs Act (the "Act") became effective on January 1st, and will sunset (or default to prior law) after December 31, 2025, absent further congressional action. In addition to extensive income tax related changes, including modifications to the individual and corporate income tax rates, doubling of the standard income tax deduction, capping of the state and local tax deduction, elimination of the personal income tax exemption, increase in the exemption for the alternative minimum tax, and decrease in the mortgage interest deduction, the Act temporarily doubles the federal estate, generation-skipping transfer ("GST") and gift tax exemption amounts, thereby offering high net worth families enhanced planning opportunities.

For tax years beginning January 1, 2018 and expiring December 31, 2025, the applicable federal exemption amount will be set to a new $10,000,000 base, double the $5,000,000 base set under the 2010 Tax Relief Act. The exemption is adjusted annually for inflation, and can be utilized for gifts made during lifetime, or at death. Accordingly, an individual dying in 2018 can shelter up to $11,200,000 in assets from these taxes. Consistent with prior law, a concept called "portability" is included in the Act, affording the personal representative (executor) of a deceased spouse's estate the election to "port" over any unused estate tax exemption to the surviving spouse. As a result, in 2018, a married couple can shelter up to $22,400,000 in assets from these taxes. Importantly, portability does not apply to the GST tax; therefore, balancing asset ownership between both spouses remains vital to implementing an estate tax efficient plan. There is no change to the transfer tax rates under the Act; the maximum federal estate, gift and GST tax rate remains 40%.

The annual gift tax present interest exclusion increases for inflation in 2018 to $15,000 per individual (or $30,000 per married couple). Unlimited gifts for medical and education expenses paid directly to the provider are still permitted under the Act.

The separate state estate tax regimes must also be carefully evaluated. More specifically, the Massachusetts estate tax exemption is set at $1,000,000 (with no inflation adjustment) under current law, and no change in that law is presently anticipated. There is no portability to a surviving spouse of a deceased spouse's unused Massachusetts estate tax exemption. Massachusetts does not impose a separate gift or GST tax under current law; however, federal gift and GST tax planning will impact the Massachusetts estate tax liability, which must also be planned for. There is considerable variance in the estate and inheritance tax structure imposed by other states. Accordingly, for both Massachusetts and non-Massachusetts residents, and for families that own property in multiple states, the interplay between the federal and state estate tax regimes still necessitates careful crafting of one's estate plan to ensure that all available federal and state exemptions are utilized to the maximum extent possible.

In sum, the changes to the federal estate, GST and gift tax regime effected under the Act present a unique opportunity for individuals interested in preserving maximum wealth for future generations. Although temporary under current law, the doubling of the applicable exemption amounts provides high net worth individuals with an additional $5,600,000 (or an additional $11,200,000 on a combined basis) to be gifted during lifetime before the law sunsets in 2025. With proper planning, this additional, temporary exemption amount will help many families preserve significant family assets, including the value of closely-held businesses. Planning techniques that families typically use in this context include Generation-Skipping Transfer trusts, Grantor Retained Annuity Trusts, Qualified Personal Residence Trusts, Irrevocable Life Insurance Trusts, Installment Sales to Defective Trusts, and Charitable Split-Interest Trusts. Of course, any significant transfer of assets should be made only after careful consideration of anticipated future personal and financial needs. In addition, it remains important to ensure that closely-held business owners engage in buy-sell planning to ensure the uninterrupted succession of the business to the remaining owners, in the event of the death, disability, or retirement of an owner.

To find out more about how the information contained in this Client Alert may impact your personal estate plan, please call your attorney at Ruberto, Israel & Weiner and she or he will arrange for a complimentary meeting with one of the attorneys in our Trusts & Estates Group.

This article was co-authored by Deborah Pechet Quinan and Deborah Qualia Howe.

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