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CLIENT ALERT

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Estate Planning Related Provisions of the New Tax Act

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The new tax act signed by the president makes substantial changes to many aspects of U.S. tax law, representing the largest overhaul of our tax law since 1986. This article focuses on the provisions of the tax act related to estate and gift tax planning.

Exemptions

The federal estate tax, gift tax and generation-skipping transfer tax ("GST") exemptions have doubled as of January 1, 2018 from $5.6 million to $11.2 million per individual (indexed for inflation). Married individuals will therefore have combined transfer tax exemptions (i.e., estate/gift/GST exemptions) of $22.4 million.

Sunset

The increased transfer tax exemptions will terminate at the end of 2025. At that time, the transfer tax exemptions revert back to what they would have been before the new tax act (i.e., they will be cut in half). It is possible for the transfer tax exemptions to revert to their prior levels before 2025, or be extended past 2025, through legislative change.

Section 529 Plans

Section 529 Plans are used for saving for higher education costs of the plan beneficiary. Earnings in 529 Plans grow tax free and are not taxed when withdrawn to pay for eligible education expenses. Under prior law, 529 Plans could only be used for college expenses, however, under the new tax act, 529 Plans also may be used for "expenses for tuition in connection with enrollment or attendance at an elementary or secondary public, private, or religious school." Annual distributions for such purposes are limited to $10,000 per beneficiary.

Charitable Deductions

Prior law allowed a taxpayer to claim an income tax deduction for cash contributions to public charities and private foundations up to 50% of adjusted gross income. The new tax act increases the deduction to 60% of adjusted gross income.

Annual Gift Tax Exclusion

Unrelated to the new tax act, the IRS has issued a notice that the annual gift tax exclusion will increase from $14,000 to $15,000 per recipient per calendar year as of January 2018, due to inflation indexing.

Planning Considerations

The new tax act presents various planning opportunities, some of which are:

1. With the proper planning under the new tax act, a married couple with an estate under $22.4 million or an individual with an estate under $11.2 million should not pay any federal estate tax. However, if the transfer tax exemptions revert back to prior levels, or death occurs, after 2025 only $11.2 million in the case of a married couple or $5.6 million for a single individual might be shielded from federal estate tax, and the balance of a deceased individual's estate would be subject to the 40% estate tax. Prior to 2025 or any earlier repeal of the increased transfer tax exemptions, however, the increased exemptions can be used to currently transfer assets to beneficiaries (or trusts for beneficiaries) on a tax free basis, reducing the estate that would be subject to federal estate tax at death.

2. Because of the increased transfer tax exemptions, your current estate plan may contain estate tax planning that is no longer needed or consistent with your objectives. You should review your plan with your estate planning attorney to determine if any changes are warranted.

3. The new tax act retains the provision that provides your assets with a new fair market value income tax basis at death ("Step-Up-In Basis"). For some estates, it may be more beneficial to now focus on obtaining a Step-Up-In-Basis for highly appreciated assets, rather than focusing on transferring such assets to trusts or other vehicles that shield them from estate tax without obtaining a Step-Up-In-Basis.

4. If you created an irrevocable life insurance trust for the purpose of funding for the estate tax that you anticipate will be due at your death, you should review your situation and consider if maintaining the life insurance trust continues to best suit your financial needs.

This alert discusses several aspects of the new tax law as it relates to estate planning considerations. Of course, there are other aspects of this tax law that should be considered. Every individual has a unique situation and his or her situation should be analyzed by his or her agent, tax attorney or other tax professional.

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