Tax Reform

On December 22, 2017, the Tax Cuts and Jobs Act was signed into law. The new law makes sweeping changes to the income tax rules and the transfer tax rules. The transfer tax rules govern the taxation of estates, gifts and generation-skipping transfers and are the subject of this article.

The lifetime exemption for gifts and estates is doubled from $5,000,000 to $10,000,000 per person, adjusted for inflation since 2011. For gifts made and deaths occurring in 2018, the inflation-adjusted exemption is expected to be in the range of $11,200,000 per person. The generation-skipping transfer tax exemption is similarly increased. If a transfer exceeds the applicable exemption, the tax rate remains unchanged at 40%.

It is important to note that these exemption increases are temporary. On January 1, 2026, the exemption amounts revert back to $5,000,000 per person, adjusted for inflation since 2011 (projected to be in the range of $6,000,000 to $6,500,000 per person).

The very beneficial "basis step-up" regime, under which the income tax basis of an inherited asset is adjusted to the asset's fair market value on the date of death, remains in place. This allows heirs to sell appreciated assets without incurring a capital gains tax.

There are no changes in the rules for the gift tax annual exclusion. Each year a person may make annual exclusion gifts without eroding the lifetime exemption as long as the gifts are considered to be of present interests. For 2018, the annual exclusion amount is increased from $14,000 to $15,000.

The other gift tax exclusion we deal with in estate planning is the exclusion for a lifetime gift to a spouse who is not a citizen of the United States. For 2018, this exclusion is increased from $149,000 to $152,000.

For most families, the primary tax goal in estate planning will be maximizing income tax basis benefits and, while additional estate tax planning may not be necessary, an estate plan update may allow for reduced capital gains tax in the future. For some families, minimizing estate tax will still be the primary goal; these families should consider additional planning to utilize the increased exemptions before they expire.

Either way, if your estate plan has not been reviewed within the last few years, we recommend that you have your estate plan reviewed in 2018.

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