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Changes in Estate Tax Law
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Recently, federal tax legislation was passed and much of the focus has been on how it affects your income taxes. However, there are some major changes in the estate tax realm which provide a major opportunity for planning and/or give reason to revise your existing plan.

Summary:

- The Tax Cuts and Jobs Act (the "Act"), was signed by President Trump on December 22, 2017, with most provisions of the Act taking effect as of January 1, 2018.
- Estate, gift and generation-skipping transfer ("GST") tax exemptions are doubled to $11.18 million per person under the Act, creating an opportunity to evaluate new tax planning.
- The Act is scheduled to sunset on December 31, 2026, making all tax planning strategies that utilize the doubled exemption amount time-sensitive.

1. Transfer Tax Impact of the Tax Cuts and Jobs Act

The Act will impact transfer taxes in years 2018 through 2025, doubling the exemption base for gift, estate and generation-skipping transfer taxes from $5.6 million to $11.18 million per person. The Act provides that starting on January 1, 2026, the exemptions revert back to pre-2018 levels. The exemptions will continue to be indexed for inflation, but by a different, less generous measure than applicable under current law.

Other aspects of the transfer tax system will remain the same. Taxpayers will continue to receive a complete step-up in basis for inherited property included in the decedent's taxable estate. The estate, gift and GST tax rates remain at 40 percent.

2. New Planning Opportunities

The doubling of the exemption translates into an opportunity starting in 2018 for those who have used their entire $5.49 million exemptions through 2017 to transfer, without incurring current gift tax or future estate or GST, an additional $5.69 million for an individual or $11.38 million for a married couple. For those who have not used the maximum amount of their exemptions, the unused amount continues to be available. This opportunity will only be available for 8 years unless the law is extended. Further, if Democrats obtain control over Congress, they may revisit the changes sooner than 2025. The planning opportunities that the Act presents should therefore be addressed sooner than later.

Individuals whose estates will remain subject to estate tax should take advantage of the doubled exemption to fully leverage and maximize the impact of their wealth transfers. Making a transfer of estate assets to an irrevocable trust is a common estate planning strategy and will continue to be a great option for those who will owe estate tax under the Act. Because increases in value on assets within an irrevocable trust take place outside of the taxable estate, the doubled exemption can be used to target income-producing or quickly growing assets and remove them from the client's estate. These transfers should be performed as quickly as possible while the Act remains effective.

3. Review of Existing Estate Plans

Existing estate plans that use the exemption amount as a variable should be revisited and reevaluated based on the Act. For example, estate plans that divide assets between a "bypass trust" or "credit shelter trust" and a marital trust or bequest upon the death of the first spouse might no longer meet the client's needs. The increased exemption could result in substantially fewer assets (or none at all) passing to the spouse. Further, certain deductible bequests, such as any kind of charitable bequests purposefully used to shift assets away from taxation, may no longer be necessary or desired by the testator.

4. Consider your own state's tax exemption.

Many states, including New York, have their own estate and gift tax laws which differ from the federal provisions. For example, even though the federal levels for estate taxes have increased, New York's have not. New York's estate tax exemption will remain at $5.25 million per person. Therefore, it is important to review your estate plan so that both federal and state gift and estate taxes are minimized if not avoided completely.

5. Conclusion

By doubling the estate, gift and GST tax exemptions, the Act reduces the tax burden for many American families. Those individuals who have planned around the exemption amount in the past should re-evaluate their estate plans to assess whether their plans still meet their needs. High-net-worth clients having estates that remain taxable under the Act should take full advantage of the doubled exemption amount without delay.

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