TAX AND ESTATE PLANNING ALERT

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Evaluating the Fitness of Your Estate Plan for 2018 in Light of the Tax Cuts and Jobs Act

By Roetzel Partners Lisa Lipman and Erika Haupt

The recent passage of the federal Tax Cuts and Jobs Act (TCJA) significantly altered federal estate tax laws effective January 1, 2018. The TCJA increased exemption amounts for federal estate, gift, and generation-skipping transfer taxes, any one of which may impact your current estate plan. In many instances, these changes mean your estate planning documents may no longer accomplish your intended goals. Fortunately, revisions to your estate planning documents that take into account these changes can ensure that your family's tax and non-tax estate planning needs are met.

While many people like to think of estate planning as something to be checked off the list and never revisited, life events and/or government actions should periodically trigger a revaluation of an existing estate plan.

The most important estate planning provision of the TCJA doubles the exemption available from gift and estate tax for lifetime gifts to $11.2 million per person ($22.4 million per married couple). The generation-skipping transfer (GST) tax exemption also increased to $11.2 million per person ($22.4 million per married couple). As under prior law, the exemptions will adjust annually for inflation

However, these changes are not permanent. The section of the TCJA affecting transfer taxes "sunsets" at the end of 2025, and the exemptions will revert to $5 million, plus inflationary adjustments since 2011. That said, the increased estate tax exemption would shield many clients from the estate tax entirely or substantially reduce their estate tax if a death occurs prior to the end of 2025.

There are other planning opportunities created by the TCJA:

> (1) Now that the estate tax exemption is significantly higher, it may make sense to revise an estate tax plan (often referred to as an A-B trust plan) to take advantage of the step-up in basis for income tax purposes for assets included in a client's estate. In a typical estate tax plan, the credit shelter trust (also known as Trust B) is funded up to the estate tax exemption amount. While those assets will not be subject to estate tax in the surviving spouse's estate, they also will not get a step-up in basis for income tax purposes on the survivor's death. Now that the estate tax exemption is doubled, some plans should be amended to allow for part or all of the credit shelter trust to be included in a surviving spouse's estate to take advantage of income tax step up.
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> (2) The opportunity to make substantial lifetime gifts in order to take advantage of the higher exemption before it is scheduled to sunset. (The TCJA directs the Treasury to issue regulations clarifying that gifts made prior to the end of 2025 will not be "clawed back" and rendered taxable in the event that the new higher exemption level is not extended.)
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> (3) The ability to simplify estate plans for clients who no longer believe they will be subject to estate tax.
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> (4) The ability to take advantage of the increased amount of GST tax exemption.

In addition to changes that might be advisable due to the TCJA, wills, trusts, and both durable and health care powers of attorney should also be periodically reviewed to determine if any changes are necessary as your family situation, finances, or the applicable state or federal laws change.

Finally, for clients who make annual exclusions gifts – those that qualify for the gift tax annual exclusion – the annual exclusion limit per person increased from $14,000 to $15,000 effective January 1, 2018. This increase resulted from an inflation adjustment independent of the TCJA.

In addition to the potential effect of the TCJA on your estate tax plan, if any of the following life events occur since you created or updated your estate planning documents, it is time for an estate planning check-up:

- √ Death of a spouse or beneficiary
- √ Incapacity of a spouse or beneficiary
- √ Marriage or divorce
- √ Retirement or sale of a business
- √ Arrival of a natural born or adopted child
- √ Changes to your financial situation – either positive or negative
- √ Change to primary state or country of residence
- √ Other changes to the status of beneficiaries or fiduciaries, including marriage, divorce, arrival of children, and major changes in financial status

Please contact any of the listed Wealth Transfer and Succession Planning attorneys at Roetzel for an evaluation of your estate plan. We welcome your questions.

Steven Cox - Akron
scox@ralaw.com / 330.849.6714

Erika Haupt - Columbus
ehaupt@ralaw.com / 614.723.2037

Ed Hertenstein - Columbus
eherteinstein@ralaw.com / 614.723.2066

David Hochman - Chicago
dhochman@ralaw.com / 312.582.1686

Lisa Lipman - Naples
llipman@ralaw.com / 239.213.3863

Brian McAvoy - Naples
bmcavoy@ralaw.com / 239.649.2722

Ben Roth - Chicago
broth@ralaw.com / 312.582.1676

Joe Zaks - Naples
jzaks@ralaw.com / 239.649.2720