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CHANGES TO THE ESTATE AND GIFT TAX EXEMPTION UNDER THE TAX CUTS AND JOBS ACT

The Tax Cuts and Jobs Act ("TCJA"), signed into law by President Trump on December 22, 2017, changes the estate and gift tax exemption effective beginning in 2018 that will result in many fewer estates being subject to the 40% tax, and larger estates owing less tax.

Before the TCJA, the first $5 million (as adjusted for inflation in years after 2011) of transferred property was exempt from estate, gift and generation-skipping transfer ("GST") tax. In 2017, an individual could gift during his or her lifetime, or die owning, $5.49 million of assets without incurring any gift, estate or GST tax, or $10.98 million for a married couple with proper planning and estate administration allowing the unused portion of a deceased spouse's exclusion to be added to that of the surviving spouse (known as "portability"). In 2018, the exemption amount was scheduled to increase to $5.6 million, or $11.2 million for a married couple.

The new law temporarily doubles the amount that can be excluded from these transfer taxes. For decedents dying and gifts made from 2018 through 2025, the TCJA doubles the base estate and gift tax exemption amount from $5 million to $10 million. Indexing for post-2011 inflation brings this amount to approximately $11.2 million for 2018, and $22.4 million per married couple with some basic portability techniques.

The GST tax is designed to prevent avoidance of estate and gift taxes by skipping transfers to the next successive generation. The TCJA doesn't specifically mention generation-skipping transfers, but because the GST exemption is based on the basic exclusion amount, generation-skipping transfers will also benefit from the post-2017 increased exclusion.

The new law provides an enormous tax planning opportunity, affording you a limited period of time to take advantage of the increased amounts that can pass free of estate, gift and GST tax.

However, the increased exclusion amount may have an impact on your current estate plan and cause you to consider the need to redraft important estate planning documents, such as Wills and Revocable Trusts. For example, if your documents provide that a "bypass trust" (a/k/a "credit shelter trust") will be funded with an amount that can pass free of federal estate tax, with the balance passing to a marital portion (either outright or in a marital trust), it is important for you to review your estate plan and evaluate whether, given the larger exemption amount, your property is still being distributed in the proportions you desire. The increased exemption amount may result in you giving more or less than you anticipated to certain beneficiaries.

We trust this information helps you understand this change. Please contact us to discuss how it, or any of the many other changes in the TCJA, could affect your particular tax situation, and the planning steps you might consider in response.

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