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Tax Notes

New Tax Law – New Estate Plan?

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The President signed H. R. 1, The Tax Cuts and Jobs Act, into law on December 22, 2017. While most of the new law addresses business and individual income tax matters, a small portion of it provides for significant changes in the estate, gift and generation-skipping transfer tax (GST) area.

Let's take this opportunity to consider what these changes are and how they perhaps may affect your own estate planning.

New Exemption Caps

Beginning January 1, 2018, an individual's estate, gift and GST tax exemptions doubled from $5.6 million (the expected 2018 exemption adjusted for inflation from the $5.49 million 2017 exemption) to **$11.2** million. An individual, who has not previously used any of his/her lifetime exemption, can now pass on during life, at death, or in a combination thereof, up to $11.2 million of assets without incurring federal estate or gift taxes (the exemption will be indexed for future inflation). Married couples can combine their individual exemption and double it to **$22.4** million.

The increase in the exemption amounts is scheduled to sunset on December 31, 2025 and revert back to the $5.6 million exemption that would otherwise have been in effect for 2018.

Tax Rate, Basis Step-Up Rules and DSUE: Remain the Same

The new law did not change the 40% maximum estate, gift and GST tax rate.

The basis step-up rules, adjusting the basis of any property passing from a decedent to the fair market value as of the decedent's date of death, continue to apply.

The portability of the unused exclusion amount of a deceased spouse (DSUE) is still available to the surviving spouse. The DSUE, when elected by filing a federal estate tax return, is then available to be used against the surviving spouse's estate and gift tax. Portability does not apply to the GST exemption. Also, at this time, the DSUE is not available on the state level.

Annual Gift Tax Exclusion

The gift tax annual exclusion increased to **$15,000** in 2018 from $14,000 in 2017. This is an automatic adjustment due to inflation and was not part of H.R.1.

For Your Consideration

In light of the significant changes in the exemption amounts for the estate, gift and GST tax, your estate plans should be reviewed to ensure that they still accomplish your intended objectives. For example: your Will might provide that assets equal to your remaining estate tax exemption be distributed to your children, either outright or in trust, with the remaining assets going to your spouse, either outright or in trust. With the increase in the exemption to $11.2 million, this could result in the unintended consequence that a significant part of your estate will be distributed to your children and little or none to your spouse.

While the increased exemption amount is available, you might consider making lifetime gifts by using some or all the exemption amount. This would remove these assets, as well as any future appreciation, from your taxable estate even if the exemption amount reverts back to the lower exemption amount [currently scheduled for the end of 2025]. Note: This is assuming that regulations to eliminate a “clawback” will be issued. Keep in mind: any assets gifted will not receive a step-up in basis at the time of your death. The recipient of a gifted asset acquires the donor’s basis in the asset. Income tax savings vs. estate tax savings needs to be considered before making any gifts.

State Tax

Don’t forget about any potential state level transfer taxes. Estate, inheritance and gift tax filing requirements on the state level still need to be considered. This, of course, depends on what state(s) are involved. A few states with estate, inheritance and/or gift taxes to be aware of are:

New York

New York’s current estate tax exemption is $5.25 million. It is scheduled to rise on January 1, 2019 and match the federal exemption as determined before the new law changed the federal exemption amount. New York does not have a gift tax.

New Jersey

New Jersey’s estate tax was repealed beginning January 1, 2018. Since the repeal was enacted under the prior governor, many are skeptical as to how long the repeal will last under the current governor. New Jersey still imposes an inheritance tax which applies to transfers of property at death to people other than the decedent’s lineal relations. New Jersey does not have a gift tax.

Connecticut

Connecticut’s estate and gift tax exemption (Connecticut is the only state that imposes a gift tax) was increased from $2 million to $2.6 million for 2018. It will be further increased to $3.6 million for 2019. Beginning January 1, 2020 the exemption, is scheduled to match the federal exemption in effect at that time.

Summing Up

As always, there are also non-tax issues to think about when estate and gift tax planning: asset protection, guardianship of minor children, family business succession, and planning for loved ones with special needs to list a few considerations.

The newly enacted $11.2 million lifetime exemption should not lull you into a false sense of security that planning is no longer needed. There are still planning opportunities to be considered for both tax and non-tax reasons. Also, keep in mind that the $11.2 million exemption amount is temporary, currently scheduled to be significantly reduced at the end of 2025.

Contact Us

With the always changing estate tax landscape, let PKF O’Connor Davies, LLP help you ensure that you have an estate plan that is on the right track.

Any questions or comments may be addressed to Trust and Estate Department partners Mary Parente, CPA, CGMA at mparente@pkfod.com or Christine G. Pronek, CPA, MST at cpronek@pkfod.com.

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