CHANGES TO FEDERAL ESTATE, GIFT, AND GENERATION-SKIPPING TRANSFER TAX LAWS

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U.S. Public Policy, Tax, and Private Clients, Trusts and Estates Alert

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President Trump signed the Tax Cuts and Jobs Act (the "Act") on December 22, 2017, implementing a new law that affects many taxpayers. This Alert addresses some of the changes to the federal estate, gift, and generation-skipping transfer tax laws, as well as issues for consideration as individuals look to update their estate plans.

The Act doubled the federal estate, gift, and generation-skipping transfer tax exemptions through the end of 2025. As such, effective January 1, 2018, each individual has a federal exemption of $11.2 million, and married couples have a federal exemption of $22.4 million. These lifetime exemptions will be adjusted annually for inflation, beginning in 2019. As of January 1, 2026, the estate tax laws are scheduled to revert to the pre-Act law (effectively slashing the exemptions in half). The value of a person's estate that is in excess of his or her remaining applicable exemption will be subject to an estate tax at death at a flat rate of 40 percent.

In addition to the higher lifetime exemptions, the annual amount that can be given tax-free to each of an unlimited number of persons under the so-called annual exclusion has increased from $14,000 to $15,000 per year, under the inflation adjustment already applicable to those gifts.

The doubling of the federal estate, gift, and generation-skipping transfer tax exemptions has important consequences for many people. More individuals and married persons will now have estates that are no longer subject to the federal estate tax, at least until 2025. Individuals who already used all of their federal gift tax exemption under the 2017 limits but who continue to have taxable estates now or after 2025 may want to consider making additional taxable gifts to take advantage of the at least temporary ability to make additional gifts free of federal estate and gift tax. As well as outright gifts, this could include transfers designed to leverage the gift and generation-skipping tax exemptions, such as grantor retained annuity trusts or sales of assets to grantor trusts, both of which remain viable strategies under the Act. While it is possible that the increased exemptions will be extended beyond 2025, political and budgetary implications make it far from certain that Congress will act to extend the exemptions.

Further, individuals should reconsider the terms of their current estate plans to ensure the provisions in their documents are still applicable. Wills and revocable trusts often use formulas to calculate the amount to fund certain trusts upon a decedent's death. Those formulas are often tied to the federal estate tax exemptions in effect at the time of a decedent's death. Individuals should revisit their plans to review whether any formulas in their documents will have unintended consequences given the new estate tax exemptions. Certain plans could result in more assets passing to a spousal trust or to a generation-skipping transfer tax trust than originally anticipated. Other plans could be streamlined and simplified by the increased exemptions.

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While federal estate, gift, and generation-skipping transfer tax exemptions have been increased, Washington State estate tax laws remain unchanged. Effective January 1, 2018, the Washington State estate tax exemption is $2,193,000 per person. Even if a Washington individual or a married couple will not have an estate subject to federal estate tax under the Act, planning for Washington tax may still be prudent and necessary. In fact, the increase in the federal estate tax exemptions has the potential impact of increasing the effective rate of the Washington tax, due to the interaction between the federal and state estate tax regimes. The Washington rates currently begin at 10 percent and can rise to 20 percent of the value of the estate in excess of the Washington State estate tax exemption.

Regardless of whether an individual's estate is subject to estate tax at death, assets will continue to receive a step-up in basis for federal income tax purposes upon a decedent's death through 2025 and beyond. For married couples owning community property, both spouses' halves of the community property also will continue to receive a full step-up in basis at the first spouse's passing.

The Act also makes many changes to personal income tax rates, corporate tax rates, the taxation of pass-through businesses, deductions for charitable gifts, use of 529 plans, like-kind exchanges, and other tax matters. For example, the new federal deduction for business income from pass-through entities may be relevant to certain business owners. Like the estate tax, the pass-through deduction is available only for years ending before January 1, 2026. Please see the K&L Gates article, "U.S. Tax Reform: A Golden Ticket for Partnerships and S Corporations?" for greater detail on the deduction. For more information on various aspects of the Act, please visit our Tax Reform Resources page.

We invite you to contact any member of our Private Clients, Trusts and Estates team to discuss your estate plan and to review whether any updates may be prudent. We also have a deep team of tax policy, tax, and corporate attorneys at the ready to assist you with your related needs. Your Private Clients, Trusts and Estates lawyer can connect you with the other members of our team as needed.

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