

Client Alert

Tax Cuts and Jobs Act: Wealth Transfer Planning

March 5, 2018 – On December 22, 2017, President Trump signed into law the Tax Cuts and Jobs Act (the “Act”). The Act made significant changes in the federal tax laws that will affect, in one way or another, most U.S. taxpayers beginning in 2018. Morrison Cohen is detailing these changes in a series of Client Alerts. Below is a summary of the key provisions affecting wealth transfer planning starting in 2018:

- Estate and Gift Tax Exemption Base Doubled. The Act doubles the estate and gift tax exemption applicable to U.S. citizens and persons domiciled in the United States, to nearly \$11,200,000 (\$22,400,000 per married couple). The exemption amount continues to be subject to upward annual adjustment to account for inflation. Without legislative action, the inflation-adjusted exemption amount for 2018 would have been \$5,600,000. The portability rules, which provide for a person’s unused portion of estate and gift tax exemption to be “ported over” to his or her surviving spouse, remain intact. The federal estate and gift tax rate remains 40 percent.
- GST Tax Exemption Base Doubled. The generation-skipping transfer tax (the “GST tax”) exemption is similarly doubled. This additional federal tax, which is assessed on certain transfers to or for the benefit of persons two or more generations below a transferor, is imposed at a rate of 40 percent. Taxpayers have a separate exemption amount that may be applied against the GST tax. The Act also increases the GST tax exemption to nearly \$11,200,000.
- Annual Exclusion Amount Increased. The inflation-adjusted annual exclusion amount for present-interest gifts made in 2018 is projected at \$15,000 per recipient (approximately \$152,000 for gifts to a noncitizen spouse), though the Internal Revenue Service is yet to officially announce these figures. Certain direct payments for educational and medical expenses remain exempt from both the gift and GST tax regimes.

The increased estate, gift and GST tax exemptions sunset on December 31, 2025, after which date the exemptions are scheduled to revert to the amounts provided under prior law. Thus, the changes create a temporary window to engage in tax planning in order to take advantage of the increased exemptions. For instance, a U.S. couple who had completely utilized their gift tax exemptions under prior law may now make nearly \$11,420,000 worth of additional gifts without

federal gift tax consequences. Making substantial lifetime gifts before the new provisions expire may be appropriate for some taxpayers.¹

For taxpayers resident in states that impose their own estate, gift and/or inheritance taxes, the analysis is more complex. For instance, currently a New York resident with a taxable estate in excess of \$5,250,000 is subject to a separate New York estate tax with a top rate of 16 percent. New York does not impose a gift or GST tax, but a special rule set to sunset on December 31, 2018 subjects certain lifetime gifts made within three years of death to New York estate tax. The New York exemption amount will be indexed for inflation beginning in 2019.

For individuals with existing estate planning documents, immediate changes might be warranted in order to avoid unintended consequences, or a dispositive scheme that may now be undesirable. For instance, any Will or Revocable Trust that contains a formula clause tied to the federal estate, gift or GST tax exemption amounts may now transfer more property than anticipated to beneficiaries or a trust.

- Other Notable Changes. Additional changes to the federal tax law that may be of particular import in connection with personal planning starting in 2018 include:
 - The charitable contribution limit for cash gifts to public charities (and certain other tax-exempt organizations) by individuals is increased to 60 percent of adjusted gross income (as specially defined).
 - The overall (“Pease”) limitation on itemized deductions of certain high-income taxpayers is suspended.
 - Tax-free distributions from 529 plans are expanded to include amounts for tuition and certain other expenses for elementary or secondary education, up to \$10,000 per plan beneficiary per year.

If you have any questions about the recent changes under the Act, please contact us.

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¹ The Act leaves it to the U.S. Treasury Department to issue regulations that govern the manner in which to properly account for gifts sheltered by the higher estate and gift tax exemption in the estate tax computation after the provisions of the Act sunset. It is widely-anticipated that those regulations would introduce an estate tax computation that preserves the gift tax savings. The possibility of a “claw back” of tax benefits must, however, be addressed in connection with any interim planning.