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Estate Planning Opportunities Under the New Tax Act

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The Tax Cuts and Jobs Creation Act of 2017 made several significant changes in the laws affecting the estate, gift and generation-skipping taxes.

As of January 1, 2018, the estate tax basic exclusion amount is doubled from $5,000,000 to $10,000,000, adjusted for inflation. For 2018, the estate tax basic exclusion amount is $11,180,000 (it was originally set to increase to $5,600,000). This higher exclusion amount is also incorporated by reference into gift tax and generation-skipping transfer tax. With proper planning, this means that a married couple may have up to $22,360,000 in assets before they are subject to estate tax. However, the basic exclusion amount will sunset and return to $5,000,000 on January 1, 2026 if it is not sooner extended or modified. The anti-clawback provisions of IRC 2010(g)(2) have been preserved, which means there is a unique opportunity to make gifts prior to 2026 to hedge reduction in the exclusion amount (keeping in mind that gifted assets will not receive a step-up in basis).

Also for 2018, the gift tax annual exclusion has been increased to $15,000 (up from $14,000 in 2017). This means that, beginning in 2018, a married couple is able to make annual exclusion gifts of up to a total of $30,000 to an unlimited number of recipients. It is also important to keep in mind that there is an unlimited gift tax exclusion for amounts paid on behalf of an individual directly for medical care and to educational institutions for tuition.

There are a number of things that haven't changed under the new law. No changes were made in gift and estate tax rates so that the highest marginal federal estate and gift tax rates will remain at 40% and the GST tax rate will remain a flat 40%. And, married couples may still elect portability so that the unused portion of the first-to-die spouse's estate tax exemption may be utilized by the surviving spouse. Assets transferred at death will still receive a step-up in basis to the date of death value, which continues to be a very valuable planning technique for those hoping to avoid substantial capital gains taxes.

Finally, wills and trust agreements should be reviewed for funding formulas to confirm they still meet with your objectives. Many of these documents create trusts that will be funded according to the formula provisions tied to the exemption amount in effect as of the date of death. In the event you were to die before 2026, a trust may be funded with larger amounts than you were anticipating at the time the documents were signed. As an example, if your will or trust anticipates creating both a marital and family trust, only a family trust may be created now as a result of the increased estate tax basic exclusion amount. The surviving spouse may be inadvertently excluded as a beneficiary if he or she is not a beneficiary of the family trust, and a marital trust will no longer be created according to the formula provisions.

The new law may have a significant impact on your current estate plan. We would be happy to review your estate plan in light of the new tax law to ensure that you're taking advantage of the opportunities that may be available to you.

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