Lowenstein Sandler

Client Alert

Trusts & Estates

December 22, 2017

New Tax Act: Trust & Estate Planning Considerations

On December 20, 2017, Congress passed a statute originally named the Tax Cuts and Jobs Act (the "Act"), which enacts a broad range of tax changes. The Act was signed by the President on December 22. This alert briefly summarizes the key provisions of the Act affecting federal estate, gift, and generation-skipping transfer taxes, as well as certain related state tax considerations.

First, the bad news: The newly passed Tax Cuts and Jobs Act (TCJA) did not repeal the federal estate or generation-skipping transfer (GST) taxes.

The good news is that the TCJA has doubled the maximum gift/estate tax exemption, as well as the GST exemption. Thus, as of January 1, 2018, the maximum estate/gift and maximum GST exemption amounts–which had been scheduled to rise to $5,600,000 under prior law–will be <u>$11,200,000</u>. That means a married couple pooling their exemptions will be able to shelter up to <u>$22,400,000</u> from gift, estate, and GST taxes. That also means an individual who had previously used all his or her estate/gift and GST exemptions will have an additional $5,600,000 of exemptions with which to plan. [As previously scheduled, on January 1 the gift tax annual exclusion will increase from $14,000 to $15,000 and the annual exclusion for gifts to non-U.S. citizen spouse will increase from $149,000 to $152,000.]

So, what does this mean for you?

<u>If you still have a taxable estate and are in a position to make gifts of the increased exemption amounts</u>, contact us! The TCJA creates unprecedented opportunities to create new gifting vehicles or augment existing gifting strategies.

<u>If you still have a taxable estate but are not able, or willing, to make gifts of the increased exemption amounts</u>, contact us! We can design an estate planning strategy that allows your family to "lock in" the exemption increase without having to part with meaningful economic value or control.

<u>If the exemption increases mean that your family will no longer be subject to estate, gift, or GST taxes</u>, contact us! We can review your plan to identify income tax planning opportunities and ascertain whether a simplified plan is appropriate for your family.

Like many other noncorporate tax features of the TCJA, the exemption increases are scheduled to phase out after 2025 (assuming no further law changes). As it is unlikely that Congress would seek to impose retroactive taxes on gifts made under an earlier exemption, it makes sense to take action while the exemptions remain available. In short, contact us soon!

What about state tax changes?

<u>New Jersey residents</u>: Effective January 1, 2018, New Jersey is eliminating its estate tax. That means all estates, regardless of size, will pass free of New Jersey estate tax. However, New Jersey's inheritance tax remains in place. The inheritance tax is based on the relationship of the decedent to the beneficiary rather than on the size of the estate; bequests to spouses, ancestors, and descendants are not subject to inheritance tax, while most bequests to other relatives (e.g., siblings, nieces and nephews, cousins) and non-family members are subject to inheritance tax. Contact us to discuss ways to avoid inheritance tax on transfers to those individuals.

<u>New York residents</u>: New Yorkers do not get any state tax benefit from the increased federal estate tax exemption. New York's estate tax "exclusion amount" (the amount an individual can pass on free of New York estate tax) remains $5,250,000 for decedents dying in 2018. The exclusion amount will increase in 2019 but will be only one half of the federal estate tax exemption amount. To make matters worse, the New York exclusion amount is phased out for taxable estates between 100% and 105% of the exclusion. Thus, New Yorkers whose estates exceed that 105% cap receive no benefit from the exclusion amount; their estates are fully subject to New York estate tax at rates of up to 16%.

<u>Residents of other states</u>: Each state has its own system of estate and inheritance taxation. We are happy to work with your local advisors to help you minimize state taxes.

Your Lowenstein Sandler Trusts and Estates advisors look forward to hearing from you.

Note:
The TCJA has made sweeping changes to numerous income tax rules.

For more information about other provisions of the TCJA, please see the links below:

KEY CORPORATE & BUSINESS TAX PROVISIONS
KEY PARTNERSHIP TAX PROVISIONS
KEY INDIVIDUAL TAX PROVISIONS
KEY FOREIGN TAX PROVISIONS
KEY TAX-EXEMPT ORGANIZATION TAX PROVISIONS
KEY TAX PROVISIONS AFFECTING HEDGE FUNDS, PRIVATE EQUITY FUNDS AND OTHER INVESTMENT VEHICLES

Contacts

Please contact the listed attorneys for further information on the matters discussed herein.

Michael N. Gooen, Esq.
Partner
T 973.597.2366 | mgooen@lowenstein.com

John L. Berger, Esq.
Partner
T 973.597.2314 | jberger@lowenstein.com

Ashley Steinhart, Esq.
Partner
T 973.597.2520 | asteinhart@lowenstein.com

Eric D. Weinstock, Esq.
Senior Counsel
T 973.597.6184 | eweinstock@lowenstein.com

Bridget Harris, Esq.
Associate
T 973.597.2324 | bharris@lowenstein.com

Warren K. Racusin, Esq.
Partner, Chair, Trusts & Estates
T 646.414.6848 | wracusin@lowenstein.com

Kenneth J. Slutsky, Esq.
Partner
T 973.597.2510 | kslutsky@lowenstein.com

Michael P. Vito, Esq.
Partner
T 646.414.6944 | mvito@lowenstein.com

Tracy A. Snow, Esq.
Associate
T 973.422.6774 | tsnow@lowenstein.com