Estate Planning Under the New Tax Law

With the new federal tax law in mind, now is a good time to revisit estate plans and make sure they are working as intended. While it goes without saying that each person may have a different approach to making arrangements with his/her estate, it is especially important to keep estate plans up to date during times of change—such as when a family grows or laws are modified. Staying informed about tax law provisions helps individuals make smart decisions for the distribution of their assets.

The recently passed federal tax law contains reforms that may impact transfers. For 2018, the federal tax exemptions for estate, gift, and generation-skipping transfers increases from $5,490,000 in 2017 to $11,180,000 for individuals and from $10,980,000 in 2017 to $22,360,000 for married couples. Pending no intervention from Congress, these exemptions will revert back to the 2017 rates (adjusted for inflation) on January 1, 2026. This means that individuals now have double the amount of tax-free wealth distribution available if the exemption has not yet been used. It also means that individuals who already have used their lifetime exemption now have more opportunity to gift without tax consequences. With these changes, individuals with a net worth in the $5–20 million range will find the most benefits.

The new law also changed the method for indexing for inflation. Additionally, provisions were made to the gift tax. Individuals may gift $15,000, and married couples may gift $30,000 before incurring the gift tax. Previously, the annual gift tax exclusion was $14,000 for individuals and $28,000 for married couples.

Estate plans may include many different types of gifts—from cash to interests in family-owned businesses to loan forgiveness. Since the tax law could change again, it may be strategic to give complete gifts now rather than those that are gradual or incomplete. Examples of complete gifts include cash or securities, whereas an example of an incomplete gift may be a QPRT (qualified personal residence trust). With a QPRT, an individual gives away a primary residence in a trust. Yet if the individual dies during the term of the QPRT, the property is included in the estate, and the transaction has not been completed. Gifting outright is a surefire option for giving wealth that utilizes the increased exemption.

It is also worth considering the benefits of using Grantor Retained Annuity Trusts (GRATs). These allow for gifting with very low transfer tax, and this technique works in any regulatory environment. Non-grantor trusts may be a solution to the limitation of state tax deductions. Homes, businesses, and investment assets can be included in this kind of trust. Because non-grantor trusts have their own state and local tax deductions, they may be an effective way to maximize tax deductions.

The following additional tips may help with reassessing estate plans under the new tax law:

- A change in Congress or administration could result in new revisions to the total exemptions amount. Therefore, it could be advantageous to use this opportunity while it is currently in effect.
- Life insurance policies are often used to pay estate taxes upon death. With the increase in exemptions, individuals may be inclined to terminate their policies. However, since the exemptions are scheduled to revert back to their 2017 numbers, it may be useful to keep life insurance policies, especially since they may be difficult to reacquire if one's health declines.
- The new provisions are not clear on potential clawback of previously untaxable gifts, so it is important to keep up to date with information coming from the IRS. With clawback, an individual may make a gift that is fully exempt today but dies when the exemption has reverted back to the 2017 amount. The IRS still needs to clarify what will occur in such a scenario.
- State exemptions may be very different from the federal ones. Be sure to check with an advisor to discuss the ways in which a state treats estate taxes and exemptions.

Because the new provisions to the tax law could impact estate planning, now is a good time to revisit your arrangements. To discuss your options further and determine whether a new strategy may be more beneficial, contact your Anchin Relationship Partner or Michael Rudegeair, a member of Anchin Private Client, at 212.840.3456 or info@anchin.com.

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