TRUSTS & BENEFICIARIES

Estate Planning in the New Tax Regime... And Afterward

The 2017 Tax Reform and Jobs Act increased the estate, gift, and generation-skipping transfer-tax exemption to unprecedented levels.

Since the legislation is set to expire at the end of 2025, at which point the exemptions will revert to their lower pre-Act levels unless Congress intervenes, this is the time to review your estate plan with an eye toward capitalizing on the provisions in the current law and minimizing capital gains at the point of your or your surviving spouse's death.

The Basics Haven't Changed

When re-assessing your estate plan, remember that some old techniques still work well:

Gifting

If you expect to pay a federal estate tax at death, it is usually more tax efficient to use the gift-tax exemption during your life rather than subjecting your property to the estate tax after your death. If you give during your life, any appreciation and future income on the gift passes free of estate tax to the recipient. Gifting discounted assets (partial interests in real estate, partnerships, or LLCs) can still be particularly beneficial, since leverage can be applied to the amounts gifted. The IRS regulations governing asset discounts were not changed under the 2017 Act.

Disclaimers

The use of a disclaimer (formally refusing to receive a benefit) can be used to modify the formula clause of a trust and may have the effect of transferring assets to a family/credit-shelter trust over which the surviving spouse still retains significant control while optimizing estate-tax savings. And the use of multiple disclaimers can accelerate the distribution of assets to beneficiaries, allowing for a better overall estate plan. (However, disclaimers do not always address the issue of capital gains at the death of the surviving spouse.)

It is always good policy to review your estate plan with your **financial, legal, and tax advisors** to ensure that it is flexible enough to benefit from the 2017 Tax Act.

Trusts Can Be Helpful

There are also other standard techniques that can be used to reduce estate taxes. Some use trusts that contain specific language. One such technique relies on the trustee or trust protector's authority to use his or her power of distribution to remove assets from a trust—specifically those most appropriate asset(s) for distribution and potential further gifting. Another technique permits an independent trustee or protector to confer a general power of appointment on the surviving spouse. If conferred, this will subject the property to estate tax, but will also establish a new (presumably more favorable) cost basis for the property. There are other valuable techniques as well.

It is always good policy to review your estate plan with your financial, legal, and tax advisors to ensure that it is flexible enough to benefit from the 2017 Tax Act—and from other changes as the laws and your own circumstances evolve over time.

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