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Tax Cuts and Jobs Act of 2017 - What You Need to Know

President Trump is expected to sign sweeping tax legislation into law before December 25, 2017. Although the exact content of the Tax Cuts and Jobs Act of 2017 ("TCJA") is not entirely certain, we have an indication based upon a report issued by the House-Senate Conference Committee on December 15, 2017. This alert summarizes a few provisions of the proposed TCJA most directly related to trusts and estates.

Estate and Gift Tax

The proposed TCJA increases the federal estate and gift tax exemption to $10 million, indexed for inflation, for decedents dying and gifts made after 2017 and before 2026. In 2018, this amount is estimated to be approximately $11.2 million. When the proposed TCJA sunsets on January 1, 2026, the estate and gift tax exemption reverts to the inflation adjusted $5 million exemption, which is estimated to be approximately $6.5 million. The proposed TCJA does not provide for a repeal of the federal estate or gift tax.

Generation-Skipping Transfer Tax

The GST tax provisions in the proposed TCJA mirror the estate and gift tax provisions. Specifically, the GST tax exemption will increase to $10 million, indexed for inflation, for generation-skipping transfers made after 2017 and before 2026.

Charitable Giving

For many taxpayers, 2017 will be the last year they get income tax savings from their charitable gifts. The Joint Committee on Taxation estimates that the number of taxpayers who will itemize their deductions in 2018 (and thereby get tax savings from charitable gifts) will fall from 40 million under current law to just 9 million, due to the anticipated increase in the standard deduction ($24,000 for a joint return, $18,000 for an unmarried individual with at least one qualifying child, and $12,000 for single filers, all indexed for inflation).

Taxpayers who will itemize their deductions in 2017, but will not itemize in 2018,

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should consider accelerating their charitable gifts into 2017. There are a number of ways to do this. One way to get an income tax deduction in 2017 for gifts that a charity will not receive until 2018 or later is to contribute to a "donor advised fund" in 2017. Then, in future years, the donor advised fund can make grants to charities. Many organizations administer donor advised funds, including your favorite community foundation. Some organizations will open donor advised funds for as little as $5,000, and permit grants as small as $50.

In addition, taxpayers who made a multi-year pledge to a charity should consider paying the amounts scheduled for future years in 2017. When doing so, taxpayers should consider inquiring into whether the charity will give the taxpayer credit in 2018 for the larger amount pre-paid in 2017 (e.g., "sponsor" or "patron" status in 2018).

Pass-through Income

Under current law, the net income of pass-through businesses is reported by the owners on their individual income tax returns and is, therefore, subject to their individual income tax rates. Under the proposed TCJA, for years beginning after December 31, 2017, and before January 1, 2026, a non-corporate taxpayer who has qualified business income from a pass-through entity is allowed a 20% deduction for the non-wage portion of the pass-through income, subject to certain limitations. As of the writing of this alert, this deduction does not apply to certain service businesses.

There was great concern about whether this deduction would apply to trusts and estates owning pass-through business interests. As of the writing of this alert, trusts and estates are also eligible for the 20% deduction.

529 Plans

Under current law, funds in a 529 plan can be used for "qualified higher education expenses." Eligible schools are limited to post-secondary institutions. Under the proposed TCJA, distributions after 2017 can also be made for elementary or secondary public, private, or religious school expenses, and for various expenses associated with homeschool.

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Rollovers from 529 Plans to ABLE Accounts

ABLE (Achieving a Better Life Experience) accounts allow people with disabilities to save money without losing their eligibility for public benefits. This relatively new tool is aimed at providing increased financial security and stability to individuals receiving public benefits. Under the proposed TCJA, taxpayers would be permitted to rollover amounts from 529 plan accounts to ABLE accounts, if certain criteria are met.

State and Local Tax

Under current law, taxpayers can claim itemized deductions for several taxes paid at the state and local level, including property taxes, income taxes, and sales taxes. Under the proposed TCJA, for tax years beginning after December 31, 2017 and before January 1, 2026, a taxpayer is limited to a $10,000 deduction ($5,000 if married filing separate) for the aggregate of these taxes.

Concerned that taxpayers may try to avoid this limitation for years beginning in 2018, the proposed TCJA includes language prohibiting an itemized deduction in 2017 for the prepayment of state income and property taxes for 2018. Taxpayers are encouraged to consult with their tax return preparers to determine how this limitation may affect their 2017 year-end planning.

Kiddie Tax

Under current law, the "kiddie tax" taxes the unearned income of a child at the parents' tax rates if the parents' tax rates are higher than the tax rates of the child, if certain criteria are met. Under the proposed TCJA, beginning January 1, 2018, the unearned income of a child will be taxed according to the tax brackets applicable to trusts and estates, which reach the maximum tax bracket much more quickly than individual taxpayers. For example, after only $12,500 of taxable income, trusts and estates are taxed at a 37% rate, while individuals are not taxed at a 37% rate until their taxable income exceeds $300,000.

For additional information about this alert, please contact your Reinhart attorney or a member of Reinhart's Trusts and Estates team. A more comprehensive study of the TCJA will be provided by Reinhart's Tax attorneys in January of 2018. Please contact your Reinhart attorney or subscribe to our tax distribution list to receive information about this important webinar.

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