

The Trump Tax Act

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On Dec 22, 2017, President Donald Trump signed Tax Legislation into law which was the first major overhaul of the U.S. tax system in 30 years ("The Trump Tax Act"). The Trump Tax Act significantly impacts the Estate, Gift and Generation Skipping Transfer ("GST") Tax and the Annual Gift Tax Exclusion for all persons starting in 2018.

Estate Tax Law Changes

Under the new law the federal Estate, Gift and GST tax exemption amounts will increase from \$5.49 million for individuals to \$11.2 million for individuals; and from \$10.98 million for married couples in 2017 to \$22.4 million for couples in 2018. These exemption amounts are scheduled to increase with inflation each year until 2025. Under the Trump Tax Act, the estate tax the exemption amount "sunset" and on January 1, 2026 the amounts are scheduled to revert to the 2017 level (\$5.49 million) adjusted for inflation. Finally, the highest marginal estate and gift tax remains at 40%. The Trump Tax Act also increases the amount that an individual may gift annually to as many individuals as he or she desires without incurring a gift tax and without using any of the gift tax exemption amounts. In 2018 to \$15,000 (up from \$14,000 in 2017), and a married couple may make combined gifts of up to \$30,000.

The Trump Tax Act presents a great opportunity to simplify most estate plans. We recommend that you review the terms of your wills and revocable trusts to ensure that they are still in line with your most current goals and objectives. Further, married couples should immediately review their current estate plans, as the trust agreement formulas might create significant and unnecessary restrictions on a surviving spouse. Specifically, many separate revocable trusts for married couples created under previous estate tax rules are designed to be "funded" after the first spouse's death with a "reduce to zero" formula that place unnecessary restrictions on the surviving spouse. If you die before

2026 these trust formulas would likely have unintended consequences by placing larger amounts of trust assets into a "credit shelter" trust, which typically restricts your surviving spouse to interest-income and discretionary distributions of principle. Most clients, based on my experiences, do not wish to place unnecessary restrictions on a surviving spouse, and older trust agreement formulas would do just that.

The Trump Tax Act maintains the ability of a surviving spouse to elect "portability", which permits the surviving spouse to "elect" the transfer of the deceased spouse's unused exemption amount (for 2018 the unused portion of the decedent's \$11.2 million exemption) to the surviving spouse. This important tax planning technique for married couples will motivate most clients to simplify their estate planning design while maximizing tax protection available to the married couple and their heirs.

In addition, the Trump Tax Act maintains the "step up" of cost basis at death for appreciated assets to date of death value for heirs of estates. For marital planning, most trusts that maintain the decedent's assets in a "credit shelter" trust will receive a "step up" of those assets at the first spouse to die's death, but will have missed the opportunity to receive another "step up" on the cost basis of assets on the surviving spouse's death. Effectively, the estate plan design, or lack thereof, will determine whether the heirs of estate assets of a married couple will get one or two "bites at the apple" as to elimination of capital gains for heirs on inherited property. It's very important that the estate plan provides optimal tax treatment, including the elimination of capital gains tax on all inherited properties at the death of the surviving spouse.

Planning Considerations

The Trump Tax Act motivates us to immediately review existing estate plans, for individuals as well as married couples. Couples should immediately review their separate, "A-B" or credit shelter trusts. In 2018 this type of trust would place the first \$11.2 million in a restrictive irrevocable sub trust to be administered during the surviving spouse's

lifetime with likely unintended restrictions and unnecessary cost and expense for that administration. Further, this could result in less than optimal capital gains tax planning, by sacrificing the opportunity for a "step up" in cost basis of the deceased spouse's assets at the surviving spouse's death. Specifically, estate plans created before 2013 should definitely be reviewed and even recently created plans may need to be reconsidered in light of the \$11.2 million exemption.

The \$11.2 million exemption may encourage individuals to ignore estate tax planning, which will likely result in missed opportunities. Instead of doing less estate planning, the Trump Tax Act motivates us to view estate planning in a more careful, measured approach. Further, under the Trump Tax Act, now through 2025 provides a potentially historic opportunity for higher net worth individuals to pass significant amounts of wealth potentially completely tax free.

An individual or married couple that would like to make gifts to a minor child continue to have various choices on how to accomplish that including so-called "Crummey" trusts, UTMA or UGMA accounts, as well as college savings accounts. There remains the ability to gift unlimited amounts to pay on behalf of an individual directly to medical care providers and to educational institutions for tuition.

Finally, individuals that have charitable planning goals are motivated to consider adjustments to their estate plan. For example, if an individual does not anticipate owing an estate tax at his or her death, a charitable bequest will not provide any tax savings. Instead, a charitably inclined individual might consider lifetime gifting strategies in order to secure an income tax deduction on an itemized return as a viable income tax planning strategy. Finally, we encourage clients who are charitably inclined to consider designating a charity as a beneficiary of qualified plan monies (for example 401K plans and IRAs) allowing the assets to pass completely tax free, while leaving tax free assets to be distributed to the individual beneficiaries. This also ensures that a charitable organization

will not be privy to the entire estate plan design and total net worth of the individual at death.

Make Informed Decisions

This article merely scratches the surface of the Trump Tax Act and its impact on previously drafted and current estate plans. Speak with your estate planning attorney to determine necessary updates to your estate and tax planning. Remember that there are many issues to address, so make sure you are fully informed.

For further information or to schedule an appointment, please contact the Morello Law Group at 734-281-6464 or www.morellolawgroup.com.