IS YOUR HOUSE IN ORDER?

Estate Planning Considerations for 2019 and Beyond

Updates for 2019

- The Estate/Gift/GST tax exemptions remain $10 million, indexed for inflation. The 2019 indexed exemption amount is $11.4 million.
- The higher exemptions will expire on December 31, 2025 (i.e., beginning on January 1, 2026, the exemptions revert to the prior $5 million exemption, still indexed for inflation) unless Congress acts to extend them. Of course, Congress also could act to reduce the exemption earlier than 2026.
- The 40% tax rate for Estate/Gift/GST tax remains the same.
- The annual Gift tax exclusion amount will remain $15,000 (and will increase to $155,000 for gifts to a non-U.S. citizen spouse).
- Direct payments of qualified tuition and medical expenses remain gift-tax free in unlimited amounts.
- Under California's new Uniform Trust Decanting Act, it may be possible for trustees to modify certain provisions of irrevocable trusts in California by distributing or "decanting" the assets of an existing trust into a new trust. The amount of discretion that a trustee has to distribute the principal of the existing trust will determine the extent to which the trust provisions may be modified in the new trust. In some instances, a trustee may be permitted to modify both administrative and distributive provisions of an existing irrevocable trust. While the decanting power is subject to a number of limitations, this new statute offers trustees added flexibility to modernize the provisions of California irrevocable trusts.

Planning Opportunities

- The new tax law continues to give high net worth individuals additional gifting and planning opportunities. Consider taking advantage of the increased exemptions by making gifts of your maximum available exemption prior to 2026.
- The IRS has confirmed that a donor who used all of his or her higher exemption to shelter gifts from gift tax will not be subject to tax at a later date if the donor dies after 2026 when the exemption amounts revert to pre-2018 amounts.
- On the other hand, proposed regulations from the IRS suggest that a taxpayer cannot use just the "extra" exemption that's available during 2018-2025, retaining the basic $5 million exemption (adjusted for inflation) to be used after 2025. For instance, if a taxpayer makes $5 million of taxable gifts between 2018 and 2025, in 2026 when the exemption reverts to $5 million the taxpayer will have used that $5 million of exemption, not the increased amount that was temporarily available. So to take advantage of the increased exemption, taxpayers must "use it or lose it" in its entirety while it remains in effect.
- You should never give away more than you need to live comfortably, and we note that assets you give away during your life will not receive a basis adjustment at your death (the basis of gifted assets in the hands of the donee is the basis of the transferor at the time the gift is made).
- The higher exemption and "portability" rules may allow you to simplify your estate plan and limit your heirs' exposure to capital gains taxes. Further, many estate plans have an amount passing to beneficiaries based on the amount of the exemption. If yours does, you will want to make sure that the amount of the gift is still appropriate given the increased exemption amount.
- We encourage you to review your estate plan and beneficiary designations for your retirement plans, IRAs, life insurance, etc. to make sure they follow your wishes.
- We also encourage you to confirm that title to your assets (other than retirement plans and IRAs) is in the name of the trustee of your living trust. This avoids the need for probate or other court proceedings for those assets on your death or incapacity.

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