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Tax Cuts and Jobs Act: Estate, Gift & Generation Skipping Tax Exclusion Increased

To Our Clients and Friends:

The Tax Cuts and Jobs Act ("Act"), which was signed into law on December 22, 2017, makes significant changes to many areas of the Internal Revenue Code. Recently we provided you with a summary of some of the more significant provisions of the Act.

Over the next few weeks we will be sharing our further thoughts about select provisions of the Act. Our first centers on changes affecting federal estate, gift & generation-skipping taxes.

The Act doubles the basic exclusion amount for federal estate and gift taxes and the exemption amount for the generation-skipping transfer (GST) tax. For the estates of decedents dying and gifts made after 2017 and before 2026, the amount increases from $5 million to $10 million, as adjusted for inflation. Accordingly, the estate and gift tax basic exclusion amount and the GST exemption amount applicable to the estates of decedents dying and gifts made in 2018 is $11,200,000, as adjusted for inflation.

Estate and Gift Tax Exclusion Doubled

For the estates of decedents dying and gifts made after 2017 and before 2026, the basic exclusion amount for purposes of federal estate and gift taxes is doubled from $5 million to $10 million, as adjusted for inflation. Accordingly, the estate and gift tax basic exclusion amount applicable to the estates of decedents dying and gifts made in 2018 is $11.2 million, as adjusted for inflation. For a married couple using the favorable "portability" provisions of the Internal Revenue Code, the maximum applicable exclusion amount would be doubled again to $22.4 million.

Example 1: Bruce Payne, a wealthy single individual, dies in 2018 leaving a taxable estate of $20 million. His estate will owe $3,520,000 in federal estate taxes. If he had died in 2017, however, the estate tax payable would have been $5,804,000.

Example 2: Carol Cologne, a wealthy widow, dies in 2018 leaving a taxable estate of $20 million. Her late husband died earlier in 2018, having used only $2 million of his available estate tax exclusion amount. Her estate will owe no federal estate tax. However, if the couple had died under the same circumstances in 2017, the estate tax payable would have been $4,408,000.

Because the doubling of the estate and gift tax exclusion amount expires for decedents dying and gifts made after December 31, 2025, the next several years present a tremendous opportunity for wealthy individuals and married couples to make large gifts, including those that leverage the amount of the available exclusion, such as those to grantor retained annuity trusts (GRATs).

According to the IRS Statistics of Income tables presenting data on estate tax returns for tax year 2016, a total of 5,219 taxable returns were filed as compared to 7,192 nontaxable returns. Of the taxable returns, just over 2,400 fell within the $5 to $10 million gross estate range, with almost 1,300 in the $10 to $20 million range. Only 300 returns were filed with gross estates in excess of $50 million. These statistics primarily reflect data from the estates of decedents who died in 2015, when the basic exclusion amount was $5.43 million, but also include some returns for decedents who died in years prior to 2015, as well as a small number of estates with respect to deaths that occurred in 2016. The large increase in the basic exclusion amount after 2017 will no doubt lead to further decreases in the number of taxable estates.

GST Tax Exemption Amount

Because the exemption from the GST tax is computed by reference to the basic exclusion amount used for estate and gift tax purposes, the GST exemption amount for GSTs occurring in 2018 is likewise $11.2 million.

Corresponding adjustments with respect to prior gifts. In addition to the increase in the basic exclusion amount, the Act modifies the computation of gift tax payable and estate tax payable in cases where gifts have been made in prior years. With respect to the computation of gift tax payable, the tax rates in effect at the time of the decedent's death are used rather than the rates that were in effect at the time the gifts were made.

If you have any questions related to the increase of the exclusion amount for federal estate and gift taxes and the exemption amount for GST tax, or for estate planning in general, please don't hesitate to contact us. We are here to assist you.

Very truly yours,

Miller*Searles* LLC