

Tax Law Alert: Updates: 2017 Tax Cuts and Jobs Act: Its Effect on Your Estate and Corporate Taxes

As many of our clients have learned from various news sources, the Tax Cuts and Jobs Act (“Act”) was signed into law on December 22, 2017. Some of the changes have a huge positive effect for taxpayers in the areas of gift and estate taxes. As New Yorkers, however, we were not so lucky with respect to certain aspects of personal income tax.

Gift and Estate Tax

The federal exemption for gift and estate tax for 2017 was \$5,490,000. This figure was premised on a base exemption amount of \$5,000,000, with increases each year based on the CPI. The new law gives every individual a federal exemption of \$10,000,000, again with an allowance for increase. The new increases, however, will be based on what is referred to as a “chained CPI”, which basically means that the year-to-year adjustments will be lower than previously allowed. As a result, the federal exemption amount for 2018 will be in the neighborhood of \$11,000,000 (final figures are still being determined under the new adjustment rates) for individuals and \$22,000,000 for married couples.

Unfortunately, New York has not followed the lead of the new federal tax law. The New York State exemption from estate tax for 2018 is \$5,250,000. The New York law provides that on January 1, 2019, the New York State exemption from estate tax will be \$5,000,000 multiplied by a cost of living adjustment factor. Consequently, unless changes are made to the New York State tax law, there will be a large gap between the federal estate tax exemption and the New York estate tax exemption. If not addressed properly in your current legal documents, this gap could result in an estate tax that would have to be paid to the State of New York at a rate up to a maximum of 16%. Due to the wording of many Wills and Revocable Trusts prepared under now-outdated tax laws, this result could occur even at the time of the first death, where one spouse predeceases another.

In addition, the law establishing the new federal exemption amount will sunset on December 31, 2025, and the exemption will return to its current amount unless superseding changes are made by Congress. As such, we recommend that clients who wish to take full advantage of the larger exemption do so now through gift planning. This planning can include not only gifting assets to future generations of your family, but also to your spouse, in a manner such that funds will be accessible to your spouse (and through your spouse, to you) and will pass to your children free of estate tax due to the use of the larger exemption currently available, prior to its sunset.

If you have not had your documents reviewed in the last eight years, or if circumstances with respect to your family and/or finances have changed, we urge you to revisit your estate planning structure to ensure that this mismatch between the New York and federal exemptions from estate tax is addressed.

Business Income Taxes

The new tax law also provides benefits to corporations and other pass-through entities. Businesses

operating as C-Corporations will now be subject to a flat 21% tax on corporate net income. The Corporate Alternative Minimum Tax was also eliminated for tax years beginning after December 31, 2017. Both of these changes are permanent and are not subject to the same sunset provisions as other sections of the new law.

With respect to pass-through entities such as S-corporations, partnerships, limited liability companies and sole proprietorships, a 20% deduction is now available on qualified business income. The 20% deduction is limited based upon the W-2 wages for the business or a percentage of unadjusted basis of qualified property. The 20% deduction is fact specific, so a comprehensive review is necessary to determine eligibility for the deduction. Certain industries, such as law, healthcare and other professional services, are excluded from being able to take advantage of this 20% deduction unless income is below \$315,000 for joint filers or below \$157,500 for single filers. Architects and engineers are specifically excluded from these limitations.

In order to best take advantage of the new law, business owners must decide whether to change the tax treatment of their organization by converting from an S-corporation to a C-corporation, for example, or vice versa. Because such a decision is very fact- and financial-specific to your particular business, we encourage you to speak with your tax advisor about the feasibility of making a change to your organization. We are happy to consult with you or your tax advisor as to the effect of the Act on your business.

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