Tax, Trusts and Estates Update: Significant Tax Law Changes Warrant Review of Estate Plans

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On December 22, 2017, the Tax Cuts and Jobs Act (TCJA) was signed into law. The law implements tax reforms in areas of businesses taxation, individual income taxation, and taxation of estates, among others.

With regard to the changes to the taxation of gifts and estates, the federal exemption amount, the amount that may be given during lifetime or pass at death without being subject to federal estate tax, has increased to $11,200,000 per individual and $22,400,000 for a married couple. Under current law, the federal exemption will adjust each year for inflation through 2025. The New York estate tax exemption for 2018 is $5,250,000; the exemption was scheduled to increase in 2019 when it was scheduled to match the federal exemption. It is unclear if New York will be amending its law in light of the recent changes to the Federal law, since the plan to increase the exemption in 2019 to match the Federal exemption was based on a Federal exemption of $5,000,000 indexed for inflation. In addition, New York has a "cliff" – if an estate exceeds the exemption amount by more than 5%, the estate tax is assessed on the first dollar (no exemption). New Jersey has eliminated the estate tax for resident decedents who die after January 1, 2018. This may change, however, under Governor Murphy. New Jersey's Inheritance Tax laws remain unchanged. The New Jersey Inheritance Tax is based on the degree of kinship of the recipient to the decedent. Any portion of a New Jersey estate passing to anyone other than a spouse, parent or lineal descendant, or a qualified charity, will be subject to inheritance taxes at rates ranging from 11% to 16%. Nonresidents who own property in New Jersey also may be subject to Inheritance Tax.

The annual exclusion from gift tax has increased to $15,000 in 2018; individuals may gift this amount – and married couples may gift $30,000 – each year to one individual without using any portion of their lifetime exemption. Should an individual gift an amount greater than his or her annual exclusion, the exemption is reduced by the amount greater than the exclusion.

We remind our clients to periodically review their estate plans, and in particular to do so when their family or financial situation changes significantly or when there are changes to the tax laws. This year, in light of the TCJA and the elimination of the New Jersey estate tax, we are advising our clients to review their planning documents to ensure that they continue to operate in a manner consistent with their personal intentions and the current tax laws. In addition to estate taxes, it remains prudent to be mindful of other estate planning issues including income tax liability, the portability election, and the use of trusts for wealth preservation, spendthrift and creditor protection, special needs and elder law planning.

If you would like to discuss your estate plan in light of these changes, or for any reason, please contact Nino A. Coviello or Mary Joan S. Kennedy.

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