ALERT MEMORANDUM | DECEMBER 15, 2017

Estate and Tax Planning Update

Congress is poised to enact sweeping tax law changes. It is possible that a bill may be passed next week, with a likely effective date for most provisions of January 1, 2018. After legislation is enacted, we will circulate a more detailed memorandum regarding its impact on estate and tax planning.

Below are some observations regarding year-end tax planning considerations in light of the proposed legislation and a discussion of other developments of interest.

Proposed Legislation

Although much is known about the likely provisions of the legislation, changes could still be made as the bill moves to a final vote. In the meantime, clients should be aware of the following:

- Year-end income tax planning. Clients should consult with their accountants regarding year-end income tax planning. For example, clients may wish to accelerate deductions to 2017 that may be eliminated or reduced in 2018, including the deduction for state and local taxes, depending on whether they are in the AMT in 2017. Clients should also consider whether they would benefit from either deferring or accelerating charitable deductions. Lastly, for some clients, there could be a benefit to accelerating income, depending on their comparative income tax brackets in 2017 and 2018. Because the effect of the legislation on a particular taxpayer will depend on a number of factors, appropriate year-end tax planning could differ substantially for each taxpayer.

- Gift and estate tax planning. As of the date of this memorandum, it appears that the legislation is likely to effectively double the Federal gift, estate and generation-skipping transfer ("GST") tax exemptions as of January 1, 2018, which would result in exemptions in excess of $10 million (or $20 million for married couples). Because this increase could prove to be temporary, clients may wish to consider making taxable gifts in 2018 to take advantage of the increase in the gift and GST tax exemptions.

  For many clients, it will be beneficial to continue to move assets out of their estates to younger generations using traditional gift planning techniques, including annual exclusion gifts and estate "freeze" techniques such as grantor retained annuity trusts ("GRATs") and intra-family loans.

Other Developments of Interest

Below is a brief overview of certain inflation adjustments, interest rates and state estate tax changes that are relevant to many clients.

Annual exclusion gifts. For 2018, the annual exclusion amount is increasing from $14,000 per donee to $15,000 per donee (or $30,000 per donee for married couples who elect to split gifts). For gifts to a non-citizen spouse, the annual exclusion is increasing from $149,000 to $152,000. As always, we recommend that annual exclusion gifts be made as early as possible in the calendar year.

By way of reminder, payments of certain qualified education and medical expenses, including tuition payments and health insurance premiums, also qualify as tax-free gifts if made directly to the provider.

Federal gift, estate and GST tax exemptions. As noted above, the Federal gift, estate and GST tax exemptions are likely to increase under the new legislation to more than $10 million (or $20 million for married couples). If the legislation is not enacted, the exemptions will increase for inflation in 2018 to $5.6 million per taxpayer.

Current interest rates. Clients may wish to take steps to take advantage of the current low interest rates. The "benchmark" rate for a GRAT, that is, the minimum investment return necessary to pass wealth to the GRAT beneficiaries, is 2.6% in December 2017. The lowest rates for intra-family loans for December 2017 are 1.52% (for loans up to 3 years), 2.11% (for loans greater than 3 years and up to 9 years) and 2.64% (for loans greater than 9 years).

State developments.

- New Jersey estate tax repeal: The New Jersey estate tax will be eliminated entirely for decedents dying after January 1, 2018. The New Jersey "inheritance tax," which is a tax of 11% to 16% imposed on the transfer at death of property to an individual who is not the decedent's spouse, lineal ancestor or descendant, will remain in effect.

- New York estate tax: New York currently imposes an estate tax on taxable estates with a value in excess of $5,250,000, at a top estate tax rate of 16%. The exemption amount will be adjusted for inflation on January 1, 2019.

- Connecticut estate and gift tax: Connecticut currently has a gift and estate tax exemption of $2 million. Under legislation signed into law on October 31, 2017, these exemptions are scheduled to increase to $2.6 million in 2018 and to $3.6 million in 2019. The exemptions will increase again on January 1, 2020 to match the Federal estate tax exemption in effect at that time.

  Connecticut's cap on the total combined estate and gift tax will be reduced from $20 million to $15 million on January 1, 2019.

Proposed 2704 regulations. In a prior alert memorandum, we reported on proposed regulations under Section 2704 of the Internal Revenue Code that would, if enacted, significantly curtail, and possibly eliminate, most gift and estate tax valuation discounts for closely held entities. These proposed regulations have been withdrawn, and clients may wish to continue implementing planning strategies that take advantage of such valuation discounts in appropriate circumstances.

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If you have any questions regarding this alert memorandum or your estate plan, please contact any of the attorneys in the Private Clients Practice Group.

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