

Estate and Tax Planning Update

The November elections have significantly increased the potential for Federal tax law changes that could have an impact on estate, gift and income tax planning, as discussed further below. Also provided below is a review of certain tax law changes and other developments of interest to our clients, including the phase out of the New Jersey estate tax.

Developments Related to November 2016 Elections

President-elect Trump and members of Congress have proposed Federal tax law changes that, if implemented, could significantly impact estate and income tax planning for many clients. While it is unclear at this time how the current laws may be changed, clients should be aware of the following:

- In light of proposed changes to Federal income tax laws, including proposals to limit deductions, lower the top income tax bracket and tax carried interests as ordinary income, we recommend that clients consult with their accountants to discuss possible income tax planning prior to year end. In particular, clients may wish to accelerate deductions or defer income if they anticipate that their deductions may be limited or their top tax bracket may be reduced.
- It is now quite possible that the Federal estate and generation-skipping transfer (“GST”) taxes could be repealed, and it is also possible that the Federal gift tax could be modified or repealed. Clients who are considering making taxable gifts or implementing other lifetime estate planning should contact us to discuss whether it is appropriate to postpone such planning until further information is available regarding proposed tax legislation.
- Clients may wish to review their estate plans with us to consider provisions that would take advantage of an estate and GST tax repeal and potentially shelter assets from a subsequent reinstatement of the taxes. Clients may also wish to speak to us about the potential impact of tax law changes on estate plans that make formula gifts based upon the state or Federal exemption amounts.

We will continue to monitor and inform you of developments with respect to possible changes in the tax laws as further information becomes available.

Other Developments of Interest

Although Federal tax legislation may be on the horizon, clients should in many cases continue their existing gift programs and lifetime planning strategies. Below is a brief overview of certain Federal and state tax law updates and other developments that are relevant to many clients.

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This memorandum was prepared as a service to clients and other friends of Cleary Gottlieb to report on recent developments that may be of interest to them. The information in it is therefore general, and should not be considered or relied on as legal advice. Throughout this memorandum, “Cleary Gottlieb” and the “firm” refer to Cleary Gottlieb Steen & Hamilton LLP and its affiliated entities in certain jurisdictions, and the term “offices” includes offices of those affiliated entities.

Annual exclusion gifts. For 2017, the annual exclusion amount remains at \$14,000 per donee (or \$28,000 per donee for married couples who elect to split gifts). For gifts to a non-citizen spouse, the annual exclusion for 2017 is \$149,000 (increased from \$148,000 in 2016). As always, we recommend that annual exclusion gifts be made as early as possible in the calendar year. In addition to the annual exclusion amount, 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. For 2017, the Federal gift, estate and GST tax exemptions are each scheduled to increase to \$5.49 million (from \$5.45 million in 2016). For married couples who elect to split gifts, the Federal gift and GST tax exemptions are each scheduled to increase to \$10.98 million.

Current interest rates. Clients may wish to take steps to take advantage of the current low interest rates. The “benchmark” rate for a grantor retained annuity trust (“GRAT”), that is, the minimum investment return necessary to pass wealth to the GRAT beneficiaries, is 1.8% in December 2016. The lowest rates for intra-family loans for December 2016 are 0.74% (for loans up to 3 years), 1.47% (for loans greater than 3 years and up to 9 years) and 2.26% (for loans greater than 9 years).

State developments.

- New Jersey estate tax repeal: The New Jersey estate tax is being phased out. For decedents dying in 2017, the exemption amount is increased from \$675,000 to \$2,000,000, with a top estate tax rate of 16%. The estate tax will be eliminated entirely beginning 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 or a lineal ancestor or descendant of the decedent, will remain in effect.

New Jersey resident clients should discuss with us whether it may be appropriate to revise their estate planning documents in light of the estate tax phase-out, in particular, with respect to formula gifts that are based upon the New Jersey estate tax exemption amount.

- New York estate tax: New York currently imposes an estate tax on taxable estates with a value in excess of \$4,187,500, at a top estate tax rate of 16%. The exemption amount will increase to \$5,250,000 on April 1, 2017 and is scheduled to increase again on January 1, 2019 to match the inflation-adjusted Federal estate tax exemption that would be in effect at that time under current Federal law.
- Connecticut updates: Connecticut imposes a “probate fee” on the estate of a Connecticut resident decedent (including assets held in a revocable trust). Effective as of July 1,

2016, the fee is capped at \$40,000 for estates valued at \$8,877,000 or greater. In 2015, Connecticut had eliminated the cap entirely. Prior to 2015, the cap had been \$12,500.

Effective as of October 1, 2016, Connecticut updated its law relating to powers of attorney to, among other changes, clarify certain provisions relating to an agent's authority and update the statutory form. Connecticut powers of attorney signed prior to October 1, 2016 remain effective.

Finally, Connecticut imposes an estate tax and a gift tax on lifetime transfers. The estate and gift tax exemptions and the top tax rate remain unchanged at \$2,000,000 and 12%, respectively.

Proposed 2704 regulations. In a recent 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. In light of the current political landscape, it is possible that the proposed regulations will be withdrawn, leaving the current discounts intact. Clients who are contemplating transactions that take advantage of valuation discounts should consult with us before proceeding.

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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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