Simpson Thacher

Memorandum

Estate Planning Opportunities in 2018

February 23, 2018

The recent Tax Cuts and Jobs Act (the "new tax law") included significant changes to the Federal estate, gift, and generation-skipping transfer taxes, as well as income tax changes, which, among other things, affect the taxation of trusts. This is a great time to review your estate plan.

Increased Exclusion Amount. As of January 1, 2018, each U.S. individual may protect approximately $11 million[1] (the "exclusion amount") worth of property from Federal estate, gift, and generation-skipping transfer taxes. This is a doubling of the exclusion amount available under prior law. However, the increase is temporary. The exclusion amount will sunset at the end of 2025 and revert to pre-2018 levels. Given the sunset, as well as the possibility of intervening legislation reducing the exclusion amount, we encourage you to consider using your increased exclusion amount.

Individual considerations, including differing state estate and gift tax considerations, asset composition, life expectancy, and the (perhaps theoretical) possibility of a "clawback" of gifted amounts into the estate for an individual who dies after 2025, mean there is no "one-size-fits-all" plan for using the exclusion amount. We look forward to the opportunity to discuss this with you on an individual basis to customize an appropriate plan for you.

Some ways for you to take advantage of the exclusion are to:

- transfer to an existing trust for the benefit of children and/or grandchildren
- transfer to a trust with your spouse as one of the beneficiaries to allow continued access in the event of an emergency

[1] The exact figure, which will be calculated annually based on a new method of inflation adjustment, has not yet been announced by the IRS.

- forgive outstanding loans as a "cashless" gifting technique
- for those who do not wish to make additional gifts, protect existing trust funds from the generation-skipping transfer tax with a special filing

Revisit Existing Wills to Prevent Unintended Consequences. You should revisit your current will and revocable trust to ensure that dispositions of the estate or generation-skipping exclusion amounts ("formula bequests") continue to be consistent with your planning goals.

For example, someone whose will contains a formula bequest which, under prior law, would have resulted in a bequest to her child of approximately $5 million, with the balance of her assets passing to her spouse, may want to consider whether the formula (which, under the new tax law, could result in a bequest to her child in excess of $11 million) is still appropriate.

State Income Taxes on Trusts. If you have created or are a beneficiary of any non-grantor trusts, this is a good time to consider the impact of the new limits on the state and local income tax deduction on such trusts. We would be glad to discuss with you how such trusts may be restructured to minimize or defer state taxes.

For further information, please contact one of the following members of the Firm's Personal Planning Practice:

Laura M. Twomey
+1-212-455-3120
ltwomey@stblaw.com

Alison G. Silverman
+1-212-455-3611
asilverman@stblaw.com

Neera Rellan Stacy
+1-212-455-2761
nstacy@stblaw.com

Gena R. Hatcher
+1-212-455-2071
ghatcher@stblaw.com

Simpson Thacher Worldwide

UNITED STATES

New York
425 Lexington Avenue
New York, NY 10017
+1-212-455-2000

Houston
600 Travis Street, Suite 5400
Houston, TX 77002
+1-713-821-5650

Los Angeles
1999 Avenue of the Stars
Los Angeles, CA 90067
+1-310-407-7500

Palo Alto
2475 Hanover Street
Palo Alto, CA 94304
+1-650-251-5000

Washington, D.C.
900 G Street, NW
Washington, D.C. 20001
+1-202-636-5500

EUROPE

London
CityPoint
One Ropemaker Street
London EC2Y 9HU
England
+44-(0)20-7275-6500

ASIA

Beijing
3901 China World Tower
1 Jian Guo Men Wai Avenue
Beijing 100004
China
+86-10-5965-2999

Hong Kong
ICBC Tower
3 Garden Road, Central
Hong Kong
+852-2514-7600

Seoul
25th Floor, West Tower
Mirae Asset Center 1
26 Eulji-ro 5-Gil, Jung-Gu
Seoul 100-210
Korea
+82-2-6030-3800

Tokyo
Ark Hills Sengokuyama Mori Tower
9-10, Roppongi 1-Chome
Minato-Ku, Tokyo 106-0032
Japan
+81-3-5562-6200

SOUTH AMERICA

São Paulo
Av. Presidente Juscelino
Kubitschek, 1455
São Paulo, SP 04543-011
Brazil
+55-11-3546-1000