



Income and Estate Tax Planning Under the New Tax Laws

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Changes in Tax Laws by the 2017 Tax Cuts and Jobs Act

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Estate, Gift, and GST Taxes

- 2018 Estate/Gift and GST tax exemption - \$11,180,000/person
 - Expires January 1, 2026
 - Use it or lose it
 - Probably no clawback
 - No repeal

2017 Tax Cuts and Jobs Act

- Estate, gift and GST taxes are irrelevant to most estates now
- Business as usual for large estates
 - Discount planning and family limited partnerships still effective if structured appropriately (Powell case)

Highest Tax Brackets

- 37% Single (\$500,00+)
- 37% Married Filing Jointly (\$600,000+)
- 37% Married Filing Separately (\$300,000+)
- 37% Trusts (\$12,500+)
- 3.8% Net Investment Income Tax (on interest, dividends, rents, royalties, capital gains, and trade or business income that is a passive activity)

Capital Gains/Qualified Dividends

- Long-Term Capital Gains and Qualified Dividends 20% thresholds:
 - Trusts over \$12,700
 - Single over \$425,801
 - Married filing jointly over \$479,000
 - Married filing separately over \$239,500
 - Head of household over \$452,400

Income vs. Estate Taxes

- Even before imposition of state income taxes, top rates are effectively 40.8% for ordinary income and 23.8% for long-term capital gains
- Highest income tax rate is more than estate/gift and GST tax rate of 40%

Income Tax Basis Planning

- Avoid gifts of highly appreciated property to obtain basis adjustment at death
- Transfer assets to spouse who is likely to die first (using irrevocable trusts to avoid IRC § 1014(e))
 - Use of LLCs to facilitate the quick transfer of assets to spouse in poor health
- Sell loss property prior to death to realize loss

Basis Planning

- Update revocable trusts to grant a beneficiary of a credit shelter trust or lifetime trust a “formula” general power of appointment for basis adjustment at death
 - Formula adjusts to ensure no federal or state estate taxes will be owed

Basis Planning

- Unneeded Insurance Trusts, Qualified Personal Residence Trusts, Credit Shelter Trusts, and other Irrevocable Trusts
 - Modify irrevocable trust to grant formula power of appointment to achieve basis adjustment but maintain divorce or creditor protection

Basis Planning

- Upstream Planning
 - Give a parent or person of older generation a general power of appointment over your appreciated assets so you obtain a basis adjustment at the older person's death
 - Limit the power to creditors consented to by a non-adverse trustee

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Questions?

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