Tax Update for 2018

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Agenda

- Overview.
  - Estate & GST Planning Changes
  - Charitable Contribution deductibility
  - Valuing & Donating Cryptocurrency
  - Electronic Wills

Estate Planning

- The lifetime exemption amount for estate and GST tax was increased from $5,490,000 to $11,200,000 per taxpayer
  - The increased exemption is scheduled to expire 1/1/2026
- Estate plans following a traditional AB trust formula approach may now be heavily weighted towards the credit shelter/family trust. This can result in no assets being transferred to the marital trust for the benefit of the surviving spouse
- Trusts that are designed to qualify as a Qualified Terminable Interest Trust (QTIP) may no longer be needed.
  - QTIP trusts require mandatory income distributions
  - Trust could be amended to replace the mandatory distributions with more flexible discretionary distributions.
- Now is a great time to re-examine estate plans and trusts drawn up under the much lower lifetime exemption limits

Estate Planning- GST

- The increased Lifetime exemption also increased the GST exemption
- Instead of making outright gifts to skip persons, taxpayers can establish a GST trust and allocate the increased exemption amount to such trust, rendering it fully exempt from GST tax
- Taxpayers can also use the increase to make late allocations on prior gifts to trust
  - Allocating GST to trusts allows for distributions from those trusts to be GST tax exempt

Charitable Contribution Deductibility

- Taxpayers can now deduct cash charitable contributions up to 60% of Adjusted Gross Income
- Taxpayers donating non-cash assets will still be limited to 30% of Adjusted Gross Income, this limitation was not changed by the Tax Cuts and Jobs Act
- The 3% Pease limitation, which limited the amount of charitable contributions and other itemized deductions, was repealed. High income tax payers are no longer limited on their charitable deductions.

Itemizing Vs. Standard Deduction- Charitable Contributions

- Standard deduction increased from $12,700 to $24,000 per married couple for 2018
- Tax Cuts and Jobs Act limited deductions for state, local, foreign and real estate taxes to $10,000.
- This limitation may cause more high income taxpayers to take the standard deduction rather than itemize.
  - Especially for those taxpayers who no longer pay mortgage interest.
  - Or taxpayers with little to no investment interest expense

Itemizing Vs. Standard Deduction- Charitable Contributions

- Charitably minded taxpayers who's itemized deductions are less than the available standard deduction can "bunch" their charitable contributions to maximize years in which they itemize.
  - Donor Advised Funds are popular vehicles for taxpayers who wish to employ the bunching strategy
  - Charitable Remainder Trusts can also be used to create a large charitable deduction in the initial year, while paying a fixed percentage or fixed dollar amount to the donor for a fixed number of years or for their lifetime.

Direct Gifts from IRAs

- The Tax Cuts and Jobs Act did not change the rules for Direct gifts from IRAs
- Taxpayers over 70.5 years of age are still able to make up to $100,000 of qualified charitable deductions from their IRA each year not limited by AGI
- Can be taken even if the taxpayer does not itemize

Cryptocurrency

- Cryptocurrency is a digital or virtual currency that uses cryptography for security
- Difficult to counterfeit and therefore are considered very secure
- The IRS classifies cryptocurrency as property and is subject to capital gains or losses when sold or exchanged (Notice 2014-21)
- Popular Cryptocurrencies are Bitcoin, Ethereum, Ripple, and Dash
- It is important to note that most cryptocurrencies must purchased with Bitcoin and not dollars.
  - This can create a capital gain or loss on exchange due to the volatile nature of the asset

Valuing Cryptocurrency for Charitable Contributions

- Taxpayers can donate cryptocurrency to accepting charities
- As with regular non-cash contributions taxpayers can donate appreciated property and defer gain
- A qualified appraisal is necessary to obtain the fair market value of the charitable contribution (IRC Sec 170)
  - Online market exchanges are not reliable to ascertain value
- Gift acceptance policies will likely need to be updated for Charities willing to accept these assets

Digital or Electronic Wills

- Electronic Will is a broad term that can mean any will
  - Typed on a computer
  - Signed Electronically
  - Witnessed or notarized by webcam
- The Uniform Law Commission is currently working on an act to modernize the law to include Electronic Wills
- The act is expected to be released sometime in July 2019
- As "E-Wills" become more popular we can expect states to make laws accepting or explicitly forbidding these new types of wills
  - This will be especially important for wills with charitable beneficiaries in states that do not accept an "E-Will" as valid
- Charities will need to ask more questions on planned gifts as "E-will" gifts may be invalid in some states and not reliable

Questions?