Year-End Tax Strategies Under the Tax Cuts and Jobs Act of 2017

The Tax Cuts and Jobs Act of 2017 (the "Act") was signed into law today, December 22, 2017. The Act raises a number of questions regarding year-end tax planning strategies and whether they will produce a benefit, given the changes coming in 2018. As is detailed below, some make sense for many taxpayers to consider, while others involve highly fact-specific inquiries requiring individual analysis. Still others are not worth pursuing.

Note that much of this planning involves accelerating expenses into 2017. **That approach is useful only if you do not anticipate being subject to the Alternative Minimum Tax (AMT) in 2017**. As you consider that issue, please keep in mind that accelerating deductions into 2017 might trigger the AMT for you.

Strategies Worth Considering

- **Pre-paying estimated 4th quarter 2017 state income tax:** Unless you will be subject to the AMT for 2017, making your 4th quarter estimated state income tax payment likely makes sense. If you wait until January 15th to make that payment, it may not be deductible because the Act places a $10,000 cap on deductions for state and local taxes (including state income tax). For people who live in states with high income and property taxes (and who are not subject to the AMT in 2017), this cap means that payments made in 2017 are far more likely to be deductible than payments made in 2018.
- **Pre-paying 2018 property tax:** If you will be subject to the AMT for 2017, this strategy is not worth pursuing. Otherwise the answer here may vary by state, but for those owning real estate in states (e.g. Massachusetts) where the current fiscal year for property tax includes one or more calendar quarters of 2018, consider paying the tax for those 2018 quarters prior to January 1st. Check with your town or city to see if they accept pre-payments and can credit them in 2017. If you don't already have a property tax bill for the entire fiscal year, it may still be possible to obtain one. It might also be helpful to include a letter and/or indicate on the memo line of the check that this is a payment of property tax for the remainder of fiscal 2017, and keep copies of both.
- **Paying professional fees:** The Act eliminates so-called miscellaneous itemized deductions, including tax preparation fees, tax advice, and investment fees and expenses. If you owe any of these fees, assuming you are not subject to the AMT in 2017, payments made in 2017 will be deductible but payments made in 2018 will not. Note that 2017 payments of miscellaneous itemized deductions

will continue to be subject to the "2% floor rule" which means that those expenses are deductible only to the extent that, on a cumulative basis, they exceed 2% of adjusted gross income.

Strategies Requiring Fact-Specific Analysis

- **Charitable gifts:** Whether to accelerate charitable gifts into 2017 or defer them to 2018 is a highly fact-specific inquiry. Having said that, with rates generally headed down, those in the top brackets may realize more tax savings by deducting charitable gifts in 2017 than they would in 2018, assuming that they are not in the AMT for 2017 and will not exceed the limits on deducting charitable gifts. That argues in favor of making more charitable gifts in 2017. However, for someone who makes larger cumulative charitable gifts (over $14,000) and has higher income levels ($262,000 of adjusted gross income for individuals or $314,000 for joint filers), it may make sense to defer charitable gifts to 2018 for two reasons. The first is that the Act removes the limit on itemized deductions for high income earners, so that person may have a better chance of fully deducting large charitable gifts in 2018 than in 2017, with the caveat that the AMT might affect this equation. The second reason is that the Act raises the limit for gifts of cash to public charities from 50% of adjusted gross income to 60%, thus enabling high income earners to deduct more of that particular type of charitable gift. Note that the rules for other types of charitable gifts remain unchanged.

- **Accelerating or deferring gains/losses:** There are multiple variables at play here, including state income tax rules, predicting your top income tax bracket for 2018, and the AMT, so it is difficult to determine the best approach without extensive analysis of individual cases.

Strategies Not Worth Pursuing

- **Pre-paying your 2018 state income tax:** This will not work because the Act specifically disallows deducting pre-payments of 2018 state income tax on a 2017 tax return.

- **Gifts to individuals:** The Act doubles the gift tax exemption from approximately $5.5 million to approximately $11 million in 2018 and it will continue to be indexed for inflation. This means that anyone who has used all of their gift tax exemption will be able to make additional large gifts starting in 2018 without owing any tax. The exemption is scheduled to revert to $5.5 million (plus inflation) in 2026, and given the current volatile political climate, it will be worth considering making use of the larger exemption sooner rather than later. Also, note that the "annual exclusion" remains unchanged, so you can continue making gifts of up to $14,000 ($28,000 for married couples) to any individual without any gift tax consequence regardless of whether you have used all of your exemption. Note that the annual exclusion amounts are scheduled to increase to $15,000 and $30,000 in 2018.

We have also prepared a comprehensive summary of the new law as it applies to individuals and families. Please click here to read that.

And as always, if you have any questions or would like to discuss how the Act may affect you, please contact a member of our Private Client Group, or the author of this advisory:

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