Impacts of the 2024 Election on Estate Planning

Elections have impacts. At the time of this writing, Donald Trump will become the 47th President of the United States on January 20, 2025, and Republicans are poised to take control of both houses of Congress. This article looks at the potential impacts for estate planning in the immediate future as a result of their election. We base our analysis on the pre-Election Republican platform and the effects on estate planning if that platform is carried to fruition.

Extension of the Estate, Gift, and Generation-Skipping Transfer Tax Provisions of the 2017 Tax Cuts and Jobs Act

Then-President Trump and fellow Republicans in Congress passed the Tax Cuts and Jobs Act of 2017 ("the TCJA") without the votes of Democrats. A number of the business tax provisions of the TCJA were permanent in nature, but to comply with existing Senate rules, most of the tax provisions pertaining to individuals were enacted to expire on December 31, 2025. At the time, Republicans were betting that either they or the individual provisions would prove to be so popular that a subsequent Congress would extend these provisions prior to the expiration date. The 2024 Election appears to have paid off that bet, and Republicans are poised to move quickly after Inauguration Day to enact the extensions.

For estate planning, the most important TCJA temporary provisions were the doubling of the federal estate, gift, and generation-skipping transfer ("GST") tax exemptions. The TCJA set those exemptions at $10 million as adjusted for inflation back to 2010. For 2024, those exemptions were each $13.61 million per individual, with married couples having a total of $27.22 million available for their estates with proper planning on the death of the survivor. For 2025, the IRS has announced that these exemptions will increase to $13.99 million per individual (or just under $28 million per couple). Under the current provisions of the TCJA, those exemptions would decrease in 2026 to about $7 million per individual. Republican promises made during the 2024 campaign would extend the current exemptions and make them permanent. This change will eliminate worries about federal estate and gift taxes for a very large number of clients.

Because Maryland's estate tax exemption for Maryland estate tax is limited to $5 million per individual ($10 million total for married couples with proper planning), estate tax concerns will not go away for all clients with net worths below the federal exemption amount. However, the Maryland estate tax has a maximum rate of 16% of the value of property passing at death (above the exempted $5 million) while the federal estate tax rate kicks in at 40% of property value above the exempted amount.

Knowing that the estate tax exemption was likely to be halved under the provisions of the TCJA, a number of wealthy married clients have sought to preserve currently exempt amounts by using trusts for each other known as Spousal Lead Access Trusts ("SLATs"). Extension of the TCJA exemptions will not render such SLATs useless. In addition to taking advantage of current federal estate, gift and GST tax exemptions that might otherwise have expired, SLATs will continue to remove appreciation on initially gifted trust assets from estate taxation and will continue the immunity of trust assets from potential creditor claims. Finally, even though federal gift tax exemptions will be extended to current levels, properly drafted SLATs allow married couples annually to give each's other's SLAT amounts equal to the annual federal gift tax exclusion (currently $17,000 per person per year). Under the IRS' already announced inflation adjustments, those annual federal gift tax exclusions will increase in 2025 to $19,000 per person per year.

If enacted, what do these extensions of the TCJA exemptions portend?

- Many fewer clients will need to worry about the payment of burdensome federal estate tax at death. As a result, succession plans for businesses and farms will become easier to achieve.
- For clients unburdened by worries about federal estate tax, estate planning will focus on planning to minimize capital gains income taxation on assets left to post-mortem beneficiaries. While there will remain conflict between Maryland estate taxation and capital gains income taxation, the Maryland estate tax rate is less than the anticipated capital gains income tax rates if the TCJA provisions are extended.
- Clients who can afford to do so will find it easier to pass wealth to children while they are alive and at times when the children's needs are more urgent. Note however that, as discussed below, lifetime gifts will continue to have potential capital gains tax consequences for gift recipients that can be avoided by passing assets to them after death. Consequently, lifetime gifts to children should use cash or other assets with a basis close to the gifted value. Alternatively, low-basis assets may be gifted if the recipient is known to be in an income tax bracket that minimizes expected gains treatment.
- Clients will be able to rely on larger GST tax exemptions to use trusts to insulate assets passing to descendants from the applicability of federal and state estate tax when the descendants die (i.e., increased second tier planning).
- Fewer clients will need to rely on inflexible advanced estate planning strategies like life insurance trusts, personal residence trusts, and grantor retained annuity trusts designed to limit assets and/or the appreciation on the value of assets from the applicability of federal estate tax.
- On the negative side, fewer clients will have a tax incentive to plan their estates and will, thereby, forego other benefits of estate planning (e.g., disability planning, planning to protect beneficiary-held assets from creditors and divorce).

Extension of the TCJA individual tax provisions will also preserve the existing income tax brackets that were reduced in 2017. In particular for estate planning, while undistributed taxable income accumulated in trusts will continue to be taxed at high marginal rates, the rates and brackets are better than would be the case if the TCJA individual tax provisions were allowed to expire.

Repeal of Federal Income Tax on Social Security Benefits

According to the Social Security Administration, about 40 percent of senior citizens currently pay income tax on at least some of their Social Security benefits. President-Elect Trump has proposed to repeal federal income taxation of these benefits. If enacted, this repeal (plus lower income tax rates) will allow many seniors to live more comfortably and to grow their estates in their later years, increasing what they pass on at death.

However, note that according to the May 2024 Social Security Board of Trustees report, the fund reserves that help pay for Social Security benefits will be depleted in 2035. Without congressional intervention, retirees would then only be able to receive 83% of their full benefits. The significant problem posed by the Republican proposal to eliminate income taxes on Social Security benefits is that these taxes currently go to support the funds from which these benefits are paid. If Congress fails to take action before then, these funds will run out sooner than 2035. Depriving them of the current income taxes raised on Social Security benefits will hasten this insolvency.

Either way, planning for senior incomes will become more difficult and less certain.

Capital Gains Income Tax Basis Step-Up at Death Will Likely Continue

For a number of reasons, appreciation in the value of capital assets (including land, securities, and other property not held in qualified retirement plans) currently "steps up" at death to eliminate income taxable capital gains on those assets. In part, this is the result of a desire to avoid double taxation of such assets for both estate and income tax purposes, so the condition for such "step-up" is that the assets in question must be otherwise includible in the decedent's estate taxable estate (ignoring applicable estate tax exemptions). On the other hand, assets gifted during a person's lifetime carry over their capital gains basis to the gift recipient. As a result, gifted assets carry over the potential for capital gains income taxation while bequeathed assets generally don't.

Prior to the 2024 election, one of the Democratic tax proposals was to repeal these "stepped-up" basis rules to help pay for other proposed tax benefits. No such proposals appeared in the Republican election tax policy plans. As a result, estate planning for stepped-up capital gains basis should continue for the immediate future.

Impacts of the Trump Tariff Proposals

To pay for several new key tax initiatives, such as extending the TCJA provisions, reducing the corporate tax rate, removing the current $10,000 limit on state and local tax deductions, and eliminating income taxes on Social Security and tip income, President-elect Donald Trump proposed a 10 to 20 percent tariff on all foreign goods brought into the country and a significantly higher 60 percent tariff on imports from China. Since these tariffs are payments by importers to the federal government that are then passed on to consumers, the tariffs are effectively an additional sales tax ultimately borne by consumers. All told, according to an October 28, 2024 analysis by the Committee for a Responsible Federal Budget, "President Trump would add $7.75 trillion to the projected debt through FY 2035 under our central estimate, as a result of $10.40 trillion of deficit-increasing measures, $3.70 trillion of deficit-reducing measures, and $1.05 trillion of interest costs."

In addition, last June, sixteen Nobel prize-winning economists signed a letter expressing fear that Trump's proposals, if enacted, would "reignite" inflation:

> Many Americans are concerned about inflation, which has come down remarkably fast. There is rightly a worry that Donald Trump will reignite this inflation, with his fiscally irresponsible budgets. Nonpartisan researchers, including at Evercore, Allianz, Oxford Economics, and the Peterson Institute, predict that if Donald Trump successfully enacts his agenda, it will increase inflation.

With such greatly increased federal deficit spending and reignited inflation would come increased federal interest rates designed to pay for and control them. If the Republican tax initiatives and tariffs are enacted, the impacts of the 2024 election on estate planning must therefore include the effects of such projected inflation and interest rate increases.

If they occur, how do reignited inflation and increased federal interest rates impact estate planning?

- Coupled with 20%+ average annual appreciation in marketable securities for each of the last two years, further inflated values can be expected to significantly increase the size of the estates for which we plan.
- Higher interest rates will make it more difficult for younger family members to buy homes in an already inflated residential market. As a result, grandparents and parents may be asked to bear a larger share of the purchase price burden for their grandchildren and children. The increased gift tax exemption will facilitate gifts to make such purchases, but seniors should be encouraged to co-purchase residences with younger family members and to then leave their residence interests to the younger family members (with a stepped-up capital gains tax basis) after death.
- For clients over or near the extended federal estate tax exemptions discussed above, we will need to put more focus on limiting or diverting rapid asset appreciation to minimize future estate taxation. Despite these extended federal estate tax exemptions, planning to remove life insurance proceeds from taxable estates and removal of personal residences from taxable estates on a tax-advantaged basis should continue to be viable options for these clients. In addition, for such clients, there will be increased emphasis on the use of grantor retained annuity trusts ("GRATs") to limit estate appreciation while at the same time preserving assets for family members. (Interestingly, one impact of the 2024 election is that Democratic proposals to limit the use of GRATs and other estate planning strategies now appear dead for at least the next four years.)
- Inflated estate values should increase interest in, and open the opportunity for, more lifetime and testamentary charitable giving.
- Asset appreciation (by inflation or otherwise) should increase interest in capital gains deferral and avoidance strategies such as charitable remainder trusts.

Capital Gains Income Tax Basis Step-Up at Death Will Likely Continue

To further offset the financial and inflationary costs of its tax proposals, President-elect Trump has proposed slashing reductions in government spending. The President-elect has informally appointed

Elon Musk to head his government efficiency analysis; and Mr. Musk has claimed that he can reduce the current $6.8 trillion federal budget by $2 trillion. The important question to come is how to trim fat without harming the muscle.

Republicans in Congress have recently targeted monies being spent to support enforcement funding for the Internal Revenue Service. In June, the House Appropriations Committee proposed to provide the Service with a 2025 fiscal year budget of $10.119 billion, some $2.2 billion less than the Service's 2024 fiscal year budget. The Appropriations Committee noted that the 2025 fiscal year budget would reduce enforcement spending by $2.0 billion. One of the impacts of the 2024 election and the likely resulting Republican control of both houses of Congress and the Presidency is that proposals such as this are likely to now become the norm. In particular, in addition to reducing IRS enforcement spending, Republicans are keen to stop the development of the Service's Direct File platform. Those proposals would now seem to have a high probability of passage. If so, the Service will be in a much weaker position to challenge aggressive estate planning strategies.

Conclusion

In summary, while we don't know the precise outcomes for implementation of the Trump and Republican proposals, we have a pretty good idea about the future path given the results of this year's election. The Election of 2024 is likely to have significant impacts on estate planning in the immediate future. As is always the case, estate planning is a process requiring constant attention. Please let us know if and when we can help you with this process.