

Tax Planning in a "Post Tax Cuts & Jobs Act" World

01.19.18 | Linda J. Rosenthal, JD



We've covered in great depth the effects of the Tax Cuts and Jobs Act on nonprofits, both big and small – [here](#), [here](#) and [here](#).

But what about businesses, individuals and philanthropists?

Significant Changes to Business Taxation

If you own a business or are thinking about starting one, it's never been more important to consult with an experienced attorney and CPA. Relying on old rules of thumb or ignoring this monumental change in business taxation as you make business plans could mean paying enormous amounts of unnecessary taxes.

Many of the new, business-oriented deductions have specific rules to qualify. Although, this bill has been the subject of intense media discussion, don't rely on television programs, blog posts, or press releases. Instead, seek assistance in analyzing how to maximize your benefits under the bill.

New Opportunities for Dynasty Planning and Discounted Gifting

The doubling of the estate, gift, and GST tax exemptions to \$10 million per person (\$20 million per couple) opens a significant, once-in-a-lifetime opportunity for you to protect more assets than ever. Combined with the IRS's withdrawal of the anti-discounting section 2704 regulations earlier in 2017, tax reform opens the door for dynasty trusts, family partnerships, discounted gifts, and other strategies that could shield vast amounts for your beneficiaries.

Although the estate tax and GST tax exemption doubles on January 1, 2018, to \$10 million per person, this increased exemption expires on December 31, 2025. You may be tempted to wait, given that seven years may feel like forever. But remember that this tax legislation is likely to be heavily

modified if the political pendulum swings in the other direction. (The clock is already ticking steadily towards the 2018 midterms and 2020 Presidential election.) Of course, there are tools that can build flexibility into your plan, including trust protectors, decanting powers, and other strategies to deal with future changes. But those future strategies only work to preserve options if they are implemented plans, made while the exemption is available.

Changes to Individual Income Taxes

The new cap on state and local tax deductions may mean that it would be prudent to consider a special income-tax saving trust, called a non-grantor trust. If you have a business, an asset, stock, or anything else that has substantially appreciated in value that you're considering selling, it's important to evaluate whether a non-grantor trust would benefit you. This is a sophisticated strategy, but we are here to assist you with it.

The bill provides no reduction in personal capital gains rates (which remain 20% for most assets and taxpayers) and no repeal of the 3.8% net investment income tax. Charitable planning remains an excellent option to help reduce these taxes. If you are considering making a significant charitable gift, a charitable remainder trust, lead trust, form a private foundation, or other strategy may be an excellent option to save income and estate taxes while benefiting a cause you care about.

The increase in the standard deduction (\$12,000 for individuals, \$18,000 for heads of household, and \$24,000 for married couples filing jointly) and removal of some above-the-line deductions (moving expenses and alimony) may help save you some time at tax-time. Plus, the bill retains the deductions for 529 plans, IRAs, 401(k)s, and Health Savings Accounts (HSAs), offering you several opportunities to reduce your taxes while building financial security for the future if you choose to save and invest some of the tax savings.

Final Considerations and Next Steps

Planning to minimize income taxes is a balancing act – but it's never a good idea to postpone the planning. If you're starting a business – you need to know the new rules. And if you already have an estate plan, it's a good idea to have it evaluated in light of the new tax plan. If you don't already have one, there's never been a better time to put one in place.