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# The Estate Tax, or Lack Thereof, Under the Tax Cuts and Jobs Act of 2017

TAX REFORM

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On November 2, 2017, the House Committee on Ways and Means released a tax reform plan known as the Tax Cuts and Jobs Act (the "Act"). As expected, the bill targeted, among other areas of current tax law, the estate, gift and generation-skipping transfer taxes.

Under current law, for 2017, the first \$5,490,000 worth of transferred property (a combination of property transferred during life and at death) is exempt from the estate, gift and generation-skipping transfer taxes. For married couples, the exemption effectively doubles to \$10,980,000. Ignoring the annual exclusion (currently \$14,000 for 2017), any transfers in excess of the \$10,980,000 are subject to a top tax rate of 40%. The recipients of any transfers upon death then receive a new basis in the inherited property equal to the fair market value on date of death (commonly referred to as the basis step-up rule).

Under the Act, for transfers between January 1, 2018 and December 31, 2023, the estate, gift and generation-skipping transfer tax regime will remain in place, but the exemption per individual would double to \$10,000,000 adjusted for inflation. The estate and generation-skipping transfer taxes will be repealed for decedents with a date of death on or after January 1, 2024. Despite the repeal of the estate and generation-skipping transfer taxes on January 1, 2024, the gift tax would remain in effect with two (2) modifications from current law. First, the gift tax would retain the exemption amount of \$10 million, adjusted for inflation. Next, the top gift tax rate is lowered from 40% to 35%.

Finally, and perhaps most interestingly, the provision that affords the beneficiary of inherited property a basis "step-up" on date of death would remain in effect. In other words, beginning on January 1, 2024, an estate would not be subject to estate taxes, yet the beneficiaries will receive a step-up in basis equal to the fair market value of the inherited property on the decedent's date of death.

The Act still has many hurdles to clear and punches to absorb. The next step is to debate the bill on the floor of the House of Representatives. Once approved, whether in its current form or some amended form, it must pass a Senate vote and ultimately receive Presidential approval.

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