

Post-Election Estate Planning; Year-End Reminders

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The results of this month's Presidential and Congressional elections have significantly changed expectations regarding the federal estate, gift and generation-skipping transfer (GST) taxes. During the lead-up to the election, there were concerns about possible rate increases and reduced exemption amounts and certain proposed regulations applicable to the transfer tax valuation of interests in family-controlled businesses and investment vehicles. Post-election, those regulatory concerns no longer seem pressing, and there are expectations of tax reform legislation that may include provisions repealing the gift tax, as well as the estate and GST taxes, with possible related modifications to current federal income tax rules which provide for the income tax basis of a decedent's assets to be reset to estate tax values (sometimes referred to as a "step-up" in basis) and the non-recognition of gain on appreciated property transferred at death or by lifetime gift.

In this context, this update includes:

- A reminder about certain gifting programs and structures that do not involve the payment of any, or only very limited, gift tax and therefore continue to be attractive during this period of transfer tax uncertainty.
- A reminder regarding the current New York, New Jersey and Connecticut transfer tax rules, some of which are already scheduled to change in 2017 and beyond.
- A reminder about "formula clauses" that may provide for dispositions to family members based on federal or state transfer tax exemption amounts, and why you might want to revisit your estate planning documents if they have such clauses or otherwise include dispositions premised on the existence of a significant federal estate tax (such as a bequest to a family foundation intended as an alternative inheritance for family members who control the foundation).
- A comparison of certain aspects of the current federal estate, gift and GST tax regimes with certain alternative, or modified, income tax rules proposed by then-candidate Trump, the House Republicans and President Obama in his 2017 "Greenbook" proposal.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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