Estate planning after 2017 tax reform

Record high exemption amounts create a rare opportunity to take advantage of strategies for "locking in" those exemptions and permanently avoiding future transfer taxes.

In today's world, pursuing your life's goals is being challenged in new ways. Which makes now the perfect time to review your goals in terms of "Advice. Beyond investing." Because when we collaborate on what matters most to you, we can create a plan tailored for you.

The Tax Cuts and Jobs Act of 2017[1] (the "Act") is the most extensive tax legislation since 1986 and has many implications for tax planning, and in particular, for estate, gift and generation-skipping transfer ("GST") tax planning. While the Act does not repeal federal wealth transfer taxes,[2] it temporarily doubles the exemption from such taxes, which creates a number of opportunities and considerations for individuals and families.

Beginning January 1, 2018, and until December 31, 2025, the federal wealth transfer tax exemption amounts double from an inflation-adjusted basic exclusion amount from $5.49 million per donor to $11.18 million ($22.36 million for married couples).[3] Absent further congressional action, in seven years (2026), the exemptions will revert to their 2017 levels (adjusted for inflation). The marginal tax rate for the gift and estate taxes and the flat rate for GST will taxes remain at 40%. Assets included in an individual's estate at death continue to receive a step-up in basis at death.

This article focuses on the opportunities and considerations that taxpayers and their estate and gift tax advisors may wish to keep in mind given the new higher exemption levels and their uncertain future.

Window of opportunity

The higher exemption will shield many individuals from the estate tax entirely or substantially reduce their estate tax. Some may feel that there is no reason to incur the legal costs involved to have existing estate planning documents reviewed, or even to have new documents created if they are no longer worried about estate taxes. This would be a serious mistake. Rather, the Act provides a window of opportunity for individuals and families to re-tool estate planning documents, to take advantage of the current exemption amounts while they can, and also, to make sure that their governing documents will protect them and their loved ones from a multitude of non-tax concerns, all while being flexible enough to withstand the reversion back to lower exemption amounts beginning in 2026.

There are many non-tax benefits of estate and trust planning, such as to provide guardians for minor children, to enhance asset protection from lawsuits and divorce, to protect spendthrift beneficiaries, and to care for special needs beneficiaries, etc. Trust structures can also be helpful in protecting the aging from elder abuse. Business owners can facilitate family business succession through their estate plan. U.S. citizens or resident aliens who own property in other countries, and nonresident aliens with assets in the U.S. or who plan to move to the U.S., also have issues that can be addressed during the estate planning process. In addition to the non-tax reasons to undertake estate and trust planning, there are many important reasons to have existing documents professionally reviewed, given the new exemption levels. Many heretofore unforeseen outcomes may result now that the exemptions have increased so substantially. Surviving spouses could face administrative hurdles in unwinding structures that are no longer necessary, and family members could even be disinherited if formula funding language proscribes that certain trusts are funded at a testator's death instead of others.

There are many important reasons to have existing documents reviewed given the new exemption levels.

Now that the federal gift and estate tax exemption has increased substantially, a surviving spouse who wishes to make a portability election might be required to prepare and file an estate tax return even if such a return might not otherwise be needed.

Portability

Portability of the federal gift and estate tax exemption was not affected by the Act. This means that if a first-to-die spouse has not fully used his or her exclusion, the unused portion, technically called the "Deceased Spousal Unused Exclusion Amount" or "DSUE amount" can be transferred to the surviving spouse. In order for the surviving spouse to be able to use the DSUE amount, the executor of the deceased spouse's estate must make an election on a timely-filed estate tax return. Now that the federal gift and estate tax exemption has increased substantially, a surviving spouse wishing to make a portability election might be required to prepare and file an estate tax return even if such a return might not otherwise be needed. However, given that the gift and estate tax exemptions under the Act are not permanent, a decision not to file an estate tax return for the deceased spouse could come back to haunt the surviving spouse or their heirs down the road. Careful consideration should be made if the surviving spouse is thinking about not filing an estate tax return for a deceased spouse.

Review tax-defined formula funding in existing estate documents

A classic bequest to a credit shelter trust (or so-called "bypass trust") of the maximum amount possible without causing estate taxes may now become a bequest of the entire estate, depending on the individual's net worth and the federal estate tax exemption amount in the year of death. Is this in keeping with the taxpayer's intent? Individuals with smaller estates may find that traditional formula funding of a credit shelter trust causes unnecessary administrative complexity that the surviving spouse may want to avoid, and could even eliminate any basis step-up for trust assets at the surviving spouse's death. Other formula allocations could be problematic because the GST exemption has doubled. If an individual's current estate documents provide that the maximum amount that can pass free of GST tax is to be distributed to a trust solely for the benefit of grandchildren instead of children, it is possible that a grandparent's entire estate could bypass their children now that the GST exemption has increased. This may not be the testator's intent.

Consider the disconnect between federal and (certain) state estate tax exemptions

Married couples who live in states that impose significant estate taxes may also have good reason to review formula funding language that may exist in their current estate planning documents, which may have been drafted when the federal estate tax exemption was much lower than it is today. While the federal estate tax exemption is $11.18 million or higher, automatically funding credit shelter trusts in these states could result in a state level estate tax upon the death of the first spouse. Many individuals in this situation may be better off utilizing so-called "QTIP" and "Clayton QTIP" planning, rather than automatic formula funding of credit shelter and marital trusts that was common in the past. In legal jargon, a marital trust is a qualified terminable interest property or "QTIP" trust. Assets that pass to a QTIP trust will only qualify for the estate tax marital deduction (and therefore are not subject to estate tax upon the death of the first spouse) if an election is made on the estate tax return. If the estate documents direct 100% of the taxpayer's assets to the marital trust, but if the QTIP election on the taxpayer's estate tax return provides that only a portion of these assets will qualify for the marital deduction, only that portion of the assets will in fact be held as the marital trust. The remaining assets (those that do not qualify for the marital deduction) will instead be held in a trust that qualifies for the decedent's unused federal estate tax exemption. The assets in the QTIP trust are included in the surviving spouse's estate at death, but may not incur an estate tax if the surviving spouse has enough estate tax exemption remaining and they will be eligible for a step-up in basis. The assets in the non-QTIP trust will utilize the first spouses' estate tax exemption amount, but will not be eligible for a step up in basis at the surviving spouse's death. QTIP planning can use a single QTIP trust, or multiple QTIPs. An alternative is to leave assets to the surviving spouse outright, but allow the spouse to disclaim assets to the credit shelter trust. In addition, domicile planning to reduce estate tax exposure in states that do impose a state estate tax will continue to be important for many individuals. It is unclear whether states that currently have their own estate and inheritance tax laws will maintain those statutes, given the substantial changes to the federal transfer tax laws, so flexible funding provisions, rather than automatic funding provisions, are important.

Consider lifetime gifts sooner rather than later

Those with potentially taxable estates (i.e., individuals with a net worth above approximately $11.18 million and married couples with a combined net worth above $22.36 million) should consider utilizing the gift tax exemption amounts while the window of opportunity exists, provided that gifting will not impair their own lifestyle. Future administrations and Congresses could reduce the exemption prior to the date when the Act sunsets. This suggests that, in addition to considering early gifts to use the exemption while the window of opportunity exists, taxpayers should consider maintaining a structure that will be flexible enough to function optimally if the exemption is reduced in the future. (Individuals who live in Connecticut, currently the only state that has a gift tax, will need to be careful in making gifts that might subject them to a state gift tax.) The risk that gifts could be clawed back into a taxpayer's estate once the Act sunsets have been ameliorated since the Act directs the Treasury to issue regulations clarifying that gifts made prior to the end of 2025 will not be rendered taxable in the event that the new higher exemption level is not extended. However, until these regulations are issued in final form, the risk of claw back cannot be deemed to be zero. Still, for most individuals with a potentially taxable estate, it will make sense to give serious consideration to using the lifetime gift tax exemption sooner rather than later.

Before making a large gift, individuals may want to assess their circumstances to make sure they are not gifting assets they may need to meet their short-term or lifetime needs.

When thinking about making additional large lifetime gifts, several considerations will also come to the fore. Before making a large gift, individuals may want to undertake an assessment to make sure that they are not gifting assets they may require to meet their short-term or lifetime needs. It is important to work with an advisor who understands what you want to accomplish in life and what your main concerns are. What do you want your legacy to be? Who are the people who are most important to you? How to you plan to achieve your life's vision? UBS has developed a framework that can organize your financial life into three key dimensions:

- **Liquidity**—to help provide cash flow for short-term expenses,
- **Longevity**—for longer-term needs and
- **Legacy**—for needs that go beyond your own.

For many, the thought of making additional major gifts to trusts for the benefit of children or grandchildren will bring up emotional issues.

While some trust structures may offer individuals a "back door" to access the gifted assets if circumstances change and they need assets previously gifted, in general, individuals should be comfortable parting with the assets when they make a gift. Nevertheless, even those who determine that they can well afford to make substantial gifts may want the flexibility to know they can unwind the strategy if circumstances change. Married couples who feel that way may find it beneficial to establish an irrevocable trust for the benefit of one another, in addition to children. This trust allows the use of lifetime gift tax exemption and ensures that trust assets that are not distributed remain outside of the grantor's taxable estate, but preserves some access to trust funds by naming grantor's spouse as beneficiary. If drafted carefully, such trusts can provide asset protection as well. This structure is known as a "Spousal Lifetime Access Trust" (SLAT). Since the spouse of the grantor is a discretionary income beneficiary, a SLAT is almost always a "grantor trust" for income tax purposes, which means that all of the SLAT's income is reported on the grantor's individual income tax return, which in turn allows the SLAT to grow free of income tax during the grantor's life. It is critical that if both the husband and wife create such trusts that the trusts not be identical. If the trusts are substantially similar, then the grantors are essentially in the same economic position after the trusts are created as they were before, and the Internal Revenue Service could apply the "reciprocal trust doctrine" to include each trust's assets in the grantor's estate for estate tax purposes. Life insurance can enhance this structure to protect against the loss of income when one of the spouses dies.

In addition, for many, the thought of making additional major gifts to trusts for the benefit of children or grandchildren will bring up emotional issues. For instance, many individuals will be concerned about whether beneficiaries of large trust funds need to know that they are beneficiaries of these trust funds, or may develop attitudes a less than stellar work ethic if they learn that they are a beneficiary of a large trust. Proper trust structuring and an understanding of wealth dynamics involved can alleviate and address many of these concerns.

Avoid paying unexpected gift tax

Individuals who want to make substantial lifetime gifts will want to be careful to avoid paying unexpected gift tax. Defined value clauses may be used to minimize unexpected gift tax consequences if individuals are making large gift or sale transfers. A defined value formula clause defines a gift by reference to the value of the property transferred.

– *For example: "I hereby transfer to the trustees of the Family Trust a fractional share of my 1,000 shares of Family Business, Inc. The numerator of the fraction is $11,180,000 and the denominator is the value of such shares as finally determined for federal gift tax purposes."*

Although these clauses have been upheld by the Tax Court,[4] the IRS has continued to challenge the use of those clauses it deems abusive and they should be used with caution, and only after consultation with experienced tax or legal counsel.

Grantor Retained Annuity Trusts (GRATs) have built-in protection from valuation issues because of the adjustment clause permitted under Treasury Regulations.[5] A GRAT is an irrevocable trust designed to transfer future appreciation on an asset with little or no gift tax cost and is particularly useful when the gifted asset is expected to appreciate a great deal in a short time period of time, and the grantor is willing to gift some of that appreciation, using little or no federal gift tax exemption. However, it is not an appropriate structure to use for a GST transfer.

In any case, all gifts utilizing the lifetime exclusion should be reported on properly filed gift tax returns to start the statute of limitations.

Basis adjustment planning

Many individuals will ask themselves whether their primary concern should be removing assets from their gross estate, or rather, assuring estate inclusion to achieve a stepped-up basis without any estate tax. Existing estate planning documents should be reviewed to determine whether modifications are possible or advisable to allow flexibility in this regard and new documents should be drafted to permit as much flexibility as possible. For instance, for assets that are gifted to trusts that would otherwise be outside the grantor's taxable estate, it is possible for an independent party to be given the authority to grant a power to the settlor that would cause estate inclusion, such as a testamentary limited power of appointment.[6] This would allow assets that would not otherwise be eligible for a step-up in basis to obtain a step-up if that is deemed the most prudent course of action at the time. If a beneficiary of a trust has excess estate exemption, it might make sense if the trustee or an independent party exercising a non-fiduciary limited power of appointment is able to make distributions to the beneficiary to cause estate inclusion, and allow a step-up in basis, for assets that would not be subject to estate tax. Existing powers of appointment in estate documents, special powers of appointment, and the role of independent parties, such as Trust Protectors, should be reviewed and considered in light of the need to balance income tax concerns with wealth transfer tax planning. Weigh pros and cons of leveraged gifting depending on the asset given (interests in closely held businesses, family partnerships, etc.) with loss of step up in basis. Planning to produce valuation discounts may reduce the estate tax, but will also cause the basis of the transferred asset to be lower when the beneficiary ultimately sells the assets. However, for most ultra-high net worth individuals, leveraged gifts will likely still make sense, especially since proposed regulations to limit discounts on closely held business interests are set to be withdrawn.[7] If the gift is to a grantor trust, it may be a good idea to consider creating the trust in a jurisdiction that permits tax reimbursement clauses, however, to enhance flexibility.[8]

> Existing powers of appointment in estate documents and the roles of independent parties should be reviewed and considered in light of the need to balance income tax concerns with wealth transfer tax planning.

Optimize existing estate plan

Individuals should review existing planning structures to identify opportunities to adjust and optimize the plan (e.g., forgiving intra-family loans and reviewing family owned entities to make sure formalities have been observed. If one purpose of the family owned entity structure is to remove the structure from the donor's taxable estate, then it may make sense to remove the donor from having a vote on liquidation or distribution matters.[9] Conversely, if estate inclusion and a basis step-up is desired, one may wish to retain this power. Individuals who have previously sold assets to a defective grantor trust in exchange for a note might consider gifting additional assets to the trust to pay off all or a portion of the note, or to reduce the need for guarantees in cases in which they had previously been recommended to mitigate possible estate inclusion risk, if desired. If a step-up in basis is more desirable than estate tax planning, then consider swapping back assets or repaying the note. In some cases, borrowing assets from a third-party lender and swapping the borrowed cash with low-basis assets held in a grantor trust may make sense in order to permit the low-basis assets to obtain a step up in basis on the death of the grantor, provided that the grantor trust permits the grantor to swap assets and that the risks inherent in borrowing, including interest rate risk, are outweighed by the benefits of the transaction. Oftentimes, swap powers in grantor trusts are ignored until illness or an unforeseeable accident strikes, but a more prudent course would be to proactively have plans in place so that swap powers can be utilized in the event legal and tax advisors suggest it is in the best interest of the family. Documents can be drafted ahead of time to be used to effectuate a swap, and UBS Premier Credit Line may be established using assets held at UBS as loan collateral, to help ensure convenient access liquidity if and when the swap is made.* If the trust holds a difficult-to-value asset rather than marketable securities, an appraisal by a qualified appraiser should be completed at the time of the swap and the grantor may wish to consider reporting the exercise of a swap power on a gift tax return so that the statute of limitations will run. In any case, the advice of tax and legal counsel is warranted if prior to and at the time the swap is to be made.

It may be an ideal time to establish a dynasty trust.

Dynasty trusts

It may be an ideal time to establish a dynasty trust. Taxpayers will want to consider taking advantage of the increased GST exemption to create trusts that are GST exempt and effectively outside the transfer tax system on a perpetual basis. These irrevocable trusts allow substantial amounts of wealth to grow and compound free of federal gift, estate and GST taxes, providing tax-free benefits for grandchildren and future generations. The longevity of a dynasty trust varies from state to state, but it's becoming more common for states to allow these trusts to last for hundreds of years or even in perpetuity. Some of these transfers may be made under the laws of "domestic asset protection trust states" allowing the donor to remain as a discretionary beneficiary in the discretion of an independent trustee.

– **Example:** Susan has not yet used any of her gift and estate tax exemption. In 2018, she transfers $11.18 million to a properly structured dynasty trust. There's no gift tax on the transaction because the amount of the gift is under her unused exemption amount. The assets in the trust, together with all future appreciation, are removed from her taxable estate. Most significantly, by allocating Susan's GST tax exemption to her trust contributions, she ensures that any future distributions or other transfers of trust assets to her grandchildren or subsequent generations will avoid GST taxes. This will remain true even if the value of the assets grows well beyond the exemption amount or the exemption is reduced in the future. In general, mandatory distribution language should be avoided in long term trusts, unless required to achieve tax goals or due to state law requirements. Such language may cause assets in otherwise estate and asset protected trusts to spill out to augment the future taxable estate of the beneficiary or enable creditors to reach the assets.

Consider distributions from existing non-GST trusts to skip persons

Individuals with existing trusts that may be subject to generation-skipping tax on distributions may want to consider early distributions to a skip person to take advantage of the increased GST exemption. A late allocation of GST exemption may be possible if GST exemption had not previously been allocated. Prior to making any distribution, the trustee should consider whether the creditor protection afforded by the trust outweighs the potential tax advantages of a distribution.

Review life insurance

It is important to evaluate the function of existing or contemplated life insurance in an individual's portfolio and the role it plays in their plan. The sunsetting of the estate tax provisions in the Act will not make long term decisions about life insurance easy. In each case, a decision can be made to either (1) continue the plan as is, (2) continue the plan, but make a large one-time gift to modify the policy to a paid up policy, or, (3) if the insurance is held by an Irrevocable Life Insurance Trust ("ILIT") to use the increased exemption to make a one-time gift to avoid the need for future gifts or notices to beneficiaries, (4) exchange the policy for another policy that better suits the needs of the insured and the beneficiaries, or (5) terminate the policy and distribute the cash value to the beneficiaries.

Life insurance may play an important role as an alternative investment, and in particular, as a counterweight to perceived stock market risk.

For some with small to mid-sized estates, life insurance to fund an estate tax bill may seem less relevant, provided that such individuals are comfortable betting that they will pass away before the current law sunsets on December 31, 2025, or that the current estate and GST tax exemptions will be made permanent before they sunset. Life insurance is generally viewed primarily for its death benefit, but many also consider the important role it may play as an alternative investment, and in particular, as a counterweight to perceived stock market risk. Of course, not all life insurance policies are structured to maximize investment potential, so it is critical to review one's portfolio periodically and ensure the policy meets the client's needs and adjust the makeup of the policies if warranted. Life insurance also has strong asset protection characteristics in most states, which exempt from the claims of creditors at least a portion of the cash value or death benefit (or both) of a life insurance policy under certain circumstances. Permanent life insurance remains a useful income tax planning tool, particularly true for individuals who live in states with high state income taxes which may not be fully deductible on a federal return under the Act. Business owners often own life insurance to fund buy-sell arrangements. The amount of insurance held for this purpose is generally based on certain assumptions underlying the plan when the buy-sell agreement was drafted. Given the changes in corporate and personal income tax rates under the Act, these underlying assumptions may have changed and warrant a review of such policies. Life insurance may also play a role for individuals who decide to create non-reciprocal SLATs, to utilize the extra lifetime gift tax exemption afforded under the Act before the law sunsets or is changed by another administration. Its purpose in this context is to hedge the risk of premature death of a spouse. Other ultra-high net worth individuals will find that the estate and income tax benefits of life insurance continue to play an important role in their estate planning, despite the increase in exemption amounts. Finally, some families who own businesses or other illiquid assets that they prefer to leave to one child, find that life insurance is the great equalizer—they can leave insurance proceeds to the child who is not inheriting the business or illiquid assets so that each child receives about the same amount of assets from the estate. All of these factors need to be taken into account when evaluating the life insurance portfolio, but nevertheless, given the substantial increase in the exemption amount, albeit temporary, it is a good time to review the purpose and type of life insurance in a portfolio as well as any trusts that may own the life insurance.

The gift tax annual exclusion has risen to $15,000 per year per recipient in 2018.

Annual gift tax exclusion

The gift tax annual exclusion rises to $15,000 per year per recipient in 2018. This is not a change in the Act, but simply happens due to inflation adjustment. Medical and educational gifts for qualifying payments of tuition to an educational institution and for the payment of medical expenses (including health insurance premiums) to qualified institutions continue to qualify for the unlimited gift tax exclusion (in addition to the $15,000 current annual exclusion). The annual gift tax exclusion will continue to play a role in most individual's estate plans, however, some may find that making a lifetime gift to an ILIT or other Crummey Trust (requiring notice to the beneficiary of a right to withdraw a portion of each contribution to the trust in order to qualify for the annual gift tax exclusion) may alleviate the administrative burden of having to continue to do Crummey notices in the future. It may also provide an opportunity to address cases in which recommended administrative procedures were not followed properly in the past.

529 plans

The new law expands the benefits of 529 college-savings plans. These plans, which permit tax-free withdrawals for qualified educational expenses, also offer some unique estate planning benefits. Contributions are removed from the donor's estate even though the donor retains the right to change beneficiaries or get the money back and the donor can bunch five years' worth of annual gift tax exclusions into one year. For example, in 2018, when the annual exclusion is $15,000, a donor can contribute $75,000 to a plan ($150,000 for married couples) without triggering gift or GST taxes or using any of their lifetime exemptions. The Act makes tax-free distributions from 529 plans even more valuable, as it stipulates that, beginning in 2018, up to $10,000 per year can also be used for elementary and secondary school expenses (including religious and home-based education), not just higher-education expenses. Existing matrimonial settlement agreements that provided funding for college based on 529 balances which may now be dissipated for elementary or secondary school education may need to be reviewed as a result. Does the existing settlement agreement restrict a former spouse to using 529 funds for higher education only? If not, should the settlement agreement be renegotiated?

Charitable giving

The Act raises the adjusted gross income limitation for deductions of cash donations to public charities from 50% to 60% from 2018 through 2025. The Act also doubles the standard deduction to $24,000 for married couples ($12,000 for individuals) and eliminates the overall limitation on itemized deductions. This may create an incentive to bunch lifetime charitable contributions in a year in which a taxpayer benefits from itemizing rather than taking the standard deduction, provided that the cash flow needs of the donor and the charity are considered. This can be accomplished by funding a charitable remainder trust (CRT) or donor advised fund (DAF) in a year in which itemizing deductions makes sense. Contributions to a DAF are treated as gifts to a public charity for purposes of the deductibility limits. The deductibility limits regarding the remainder interest in a CRT depends on whether the ultimate charitable beneficiary is a public or private charity. In either case, the donor may receive an immediate income tax deduction for the amount contributed to the CRT or the DAF even though the assets may not be distributed to the ultimate charitable beneficiary for years to come. There is a five-year carry forward period for the donor to take the charitable deduction, to the extent that the charitable contribution amount exceeds 60 percent of the donor's Adjusted Gross Income in the year of the gift. Individuals who determine that they are unable to benefit from an estate tax deduction by making charitable gifts at death (if their estate is under the exemption amount), may wish to consider lifetime giving strategies to meet their philanthropic goals. Qualified retirement plans, traditional IRAs, and deferred annuities will continue to be advantageous assets to leave to charity at death even if donor's estate is not subject to an estate tax, since they are subject to an income tax if distributed to individuals.

Consider charitable contributions from qualified plans

The law permitting IRA beneficiaries who are 70½ or older to contribute up to $100,000 of their required minimum distribution to charity each year remains intact and may grow in popularity, given the increase to the standard deduction. This contribution is not tax deductible, but the amount contributed to the charity is excluded from the individual's taxable income. The charitable beneficiary must be a public charity to qualify for this benefit, and cannot be a DAF.

This Article has attempted to cover some, but by no means, all of the wealth transfer tax planning ideas that individuals should be thinking about now that the Act has become law. In summary, record-high exemption amounts, even if temporary, create a rare opportunity to take advantage of strategies for "locking in" those exemptions and permanently avoiding future transfer taxes. It is also important to review existing documents to make sure that unforeseen results are not created as a result of the Act.

–*Catherine McDermott*, Senior Wealth Strategist

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See important notes and disclosures on the next page

[1] Shortly before enactment the 2017 Tax Cut and Jobs Act was changed to "To provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018". In this Article, we will simply refer to this legislation as the "Act".
[2] For convenience, we will refer to the federal gift, estate and Generation-Skipping Transfer taxes collectively in this article as "wealth transfer taxes".
[3] Projected pending final IRS guidance.
[4] *Wandry v. Commissioner*, T.C. Memo 2012-88 (2012).
[5] Treas. Reg. § 25.2702-3(b)(1) and (2).
[6] §§ 2036(a)(2) and 2038 of the Internal Revenue Code of 1986, as amended (the "Code").
[7] In August of 2016, the U.S. Department of Treasury issued a set of complex proposed regulations designed to expand the IRS' ability to challenge valuation discounts claimed for wealth transfer tax purposes. In a report issued by Treasury Secretary Steven T. Mnuchin dated October 2, 2017 and titled "Identifying and Reducing Tax Regulatory Burdens," the Treasury announced its plan to officially withdraw "entirely" the proposed 2704 regulations.
[8] Revenue Ruling 2004-64.
[9] On May 18, 2017, the U.S. Tax Court issued *Estate of Power vs. Commissioner*, which has the potential to dramatically impact family limited partnership planning. Under *Powell*, if a partner is entitled to vote to dissolve the partnership, or any family entity, there is a material risk that the partnership assets will be subject to estate taxes. 148 T.C. 18 (May 18, 2017).

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