Dear Reader,

Just because April 15, 2019, has come and gone does not necessarily mean your tax reform journey is over. It is important to stay vigilant and continue learning about what important tax provision changes—and subsequent regulatory guidance—might mean for you as you navigate the remainder of 2019 and prepare for 2020. In the first installment of Deloitte’s 2019 essential tax and wealth planning guide, we offered insights on individual tax planning and tax policy updates that are likely to have an impact on your planning goals for the year. Now, midway through 2019, you may still have questions about which route can best take you toward those goals. Deloitte is ready to help you chart the remaining course and adjust direction as needed. In this second installment of the Guide, we offer three sections:

• The wealth transfer planning section explores the somewhat familiar landscape of the wealth transfer planning environment, as modified by the increased applicable exclusion amount provision of the 2017 Tax Act. This chapter includes a review of how the wealth transfer environment has evolved throughout the past 25 years and provides a closer look at the specific planning considerations for this year. In installment three of the Guide, we will build on this conversation, with a review of additional strategies you and your advisers may consider as the year continues, as well as what to expect beyond the close of the tax year.

• The international tax and globalization section examines how the 2017 Tax Act vastly changed the international tax regime, including new anti-deferral and anti-avoidance provisions, along with provisions that increase the US-reporting requirements. The new global intangible low-taxed income (GILTI) tax, expanded passive foreign investment company (PFIC) and controlled foreign corporation (CFC) rules, as well as ongoing considerations related to the transition tax, may require you to take another look at existing structures and supply chains. The insights and updates we share with you on these and other topics may help inform your journey through the complex international tax landscape.

• The tax policy section brings together recent updates, news, and analysis to help you stay informed on developments in Congress and guide you through tax legislation as it evolves.

Halfway through 2019, although some areas of the new tax terrain are becoming better defined, the path ahead for other areas is still unclear as we await further guidance from the Treasury and the IRS. Through this second installment of the Guide, we help to illuminate new twists and turns and prepare you for the decisions you must make as you approach new intersections.

To find a member of the Deloitte Private Wealth practice who specializes in your area of interest, please contact us at PrivateWealth@deloitte.com.

Regards,

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Wealth transfer planning

Familiar landscape. New opportunities. Where do you start?

In contrast to the individual income tax landscape, the wealth transfer tax-planning landscape may seem very familiar. Yet the doubling of the exclusion amount provides new opportunities for individuals to move their wealth transfer plan further down the path before these favorable provisions sunset.
The transfer tax system, which includes gift, estate, and generation-skipping transfer taxes, has been the object of extensive political debate for the last twenty years. Yearly bills in both the Senate and the House of Representatives have proposed repeal of the system outright. While the political landscape necessary to accomplish outright repeal never materialized, Congress has twice in the last ten years delivered significant transfer tax relief by increasing the applicable exclusion amount—the amount each taxpayer “excludes” from transfer taxation—from $3.5 million in 2009 to $5 million in 2010, and from $5.49 million in 2017 to $11.18 million in 2018. Since 2010, the applicable exclusion amount has been indexed for inflation, with the 2019 exclusion amount equaling $11.4 million per individual.

To give you an idea of how transformative this relief has been, consider that in 2000, when the exclusion amount was a mere $675,000, 108,300 estate tax returns were filed. In 2011, when the exclusion amount was $5 million, approximately 4,600 returns were filed. In 2018, although the figures are not yet available, it is projected that total returns will number only 4,000. These figures become more impressive when considering that in 2000, some 2.8 million Americans passed away, compared to about 3.2 million in 2018. At first blush, these numbers may seem to suggest that only one in every 800 Americans needs to worry about the transfer tax. That, however, is an oversimplification. First, while the applicable exclusion amount is indexed for inflation, wealth generation is exponentially greater than the inflation rate. For example, while estate tax returns filed in 2011 numbered 4,600, the returns filed in 2017 were 12,700, an increase during the “indexed exclusion amount period” of 8,100 returns. Further, it fails to consider those who, at death, did not have an estate greater than the applicable exclusion amount, but would have if they had not engaged in wealth transfer during life. While that number is impossible to know, it is interesting to note that in 2017, more than 239,000 gift tax returns were filed reporting over $74.73 billion in gifts. Comparatively, the gross estates reported on the 12,700 estate tax returns filed in 2017 totaled $192.1 billion.

Of concern, however, is that the estate tax exemption increase under the 2017 Tax Act is legislated to end. Assuming Congress allows the provisions of the 2017 Tax Act to lapse at the end of 2025, estate and gift taxes will revert to pre-2017 rules. Specifically, transfer taxes will be calculated using an exclusion amount of $5 million indexed for inflation from 2010 and a continuing top effective tax rate of 40 percent. Thus, there may be a window of opportunity.

1 https://www.irs.gov/statistics/soi-tax-stats-estate-tax-statistics. References to total returns filed have been rounded to the nearest thousandth.
Wealth transfer planning

Familiar landscape. New opportunities. Where do you start?

One point in this environment to emphasize, is that failure to utilize the full $11.4 million applicable exclusion amount, including the inflation adjustments that will occur between now and 2026, may result in the unused amounts being subject to wealth transfer taxes that would not have otherwise occurred.

Utilizing the applicable exclusion amount

Failing to avail oneself of the increased exclusion amount may result in an economic impact to the family. Consider the following illustration.

In Scenario 2, the taxpayer’s heirs will have $2,160,000 more than they would have otherwise enjoyed—an increase in their inherited wealth of 15%.

### Scenario 1

**Facts:**
- Single taxpayer with an estate of $15M on 12/31/25
- One prior gift in 2015 of $5M
- 1/1/2026 date of death, assuming at such time the applicable exclusion amount (AEA) has reverted to $5.6M and the top marginal estate tax rate is 40%

**Outcome:**
- The taxpayer has a taxable estate of $20M ($15M gross estate at death plus $5M of adjusted taxable gifts).
- The computed tax is $7,945,800 reduced by:
  - The 2026 unified credit amount ($2,185,800).
  - The section 2001(b)(2) credit on the adjusted taxable gifts in excess of the 2026 AEA ($[11M - 5.6M] * 40% = $2,160,000).

**Total net tax liability of $3,600,000.**

### Scenario 2

**Facts:**
- Same as Scenario 1, except a second gift is made in 2019 of $6M (and therefore, the estate value on 12/31/25 is $9M)
- The AEA in 2019 is $11.4M

**Outcome:**
- The taxpayer still has a $20M taxable estate ($9M gross estate at death plus $11M of adjusted taxable gifts).
- The computed tax is the same $7,945,800 reduced by:
  - The 2026 unified credit amount ($2,185,800), and
  - The section 2001(b)(2) credit on the adjusted taxable gifts in excess of the 2026 AEA ($[11M - 5.6M] * 40% = $2,160,000).

**Total net tax liability of $5,760,000.**

<table>
<thead>
<tr>
<th>Scenario 1</th>
<th>Scenario 2</th>
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<tbody>
<tr>
<td><strong>Estate Assets</strong></td>
<td><strong>Adjusted Taxable Gifts</strong></td>
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<tr>
<td>15,000,000</td>
<td>9,000,000</td>
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<tr>
<td><strong>Adjusted Taxable Gifts</strong></td>
<td>5,000,000</td>
</tr>
<tr>
<td><strong>Taxable Estate</strong></td>
<td>20,000,000</td>
</tr>
<tr>
<td><strong>Gross Estate Tax (40%)</strong></td>
<td>7,945,800</td>
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<tr>
<td>Section 2001(b)(2) credit</td>
<td>(2,160,000)</td>
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<tr>
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<td><strong>Benefit</strong></td>
<td>2,160,000</td>
</tr>
</tbody>
</table>
Wealth transfer planning

Familiar landscape. New opportunities. Where do you start?

What we consider next is what the current environment particularly encourages, which is simple ideas on a bigger scale—at least for those who have sufficient wealth to believe that the transfer taxes will always apply to them.

But, before we begin, let’s discuss a technical point. Specifically, if you use the enhanced exclusion now when making gifts, what protects you from later estate tax when the exclusion amount reverts to a smaller number? This question was addressed in guidance released by the IRS in November 2018. Specifically, the exclusion amount that governs the estate tax computations will be the greater of the exclusion amount at the date of death or the exclusion amount used during life. This is not as cryptic as it may sound. Recall that after the 2017 Tax Act sunsets, the reset smaller exclusion amount is still indexed for inflation. At some point, even this smaller number will have grown to exceed the maximum exclusion amount available in 2025. Stated differently, the use of the enhanced exclusion amount will continue to be honored notwithstanding future law changes.

Click the icons below to explore:

Outright gifts
Leveraged gift transfers
An advantage to giving in trust
Valuation considerations
Wealth transfer planning

Familiar concepts, larger scale

Leveraged gift transfers

Prior to the 2017 Tax Act, many taxpayers used the smaller $5.49 million exclusion amount as the foundation for leveraged transactions; for example, a gift to a special purpose trust, followed by a purchase of assets from the grantor at some reasonable multiple of the gift amount. Thereafter, because the exclusion amount had been utilized, such a taxpayer would then use grantor retained annuity trusts (GRATs) to transfer the appreciation on property away from his or her estate. GRATs, appropriately executed, are often effective for this purpose because they result in small taxable transfers.

If you wish to move assets more than the $11.4 million exclusion amount ($22.8 million per couple) through transactions during your lifetime, using the increased exclusion amount as seed capital to engage in similarly leveraged transactions, followed by the continued use of GRATs, may be an effective option. You and your adviser's should compare the difference in projected wealth transfer over time between an outright gift using the $11.4 million exclusion and a transaction that leverages the $11.4 million amount. Of course, it is important to recognize the inherent economic risks of extreme leverage. Further, keep in mind that the debt obligation must be serviced pursuant to its terms to avoid later gift and estate tax complications.
Wealth transfer planning

Familiar concepts, larger scale

Outright gifts

At $11.4 million, or, as noted, $22.8 million for a married couple, the enhanced exclusion amount is large enough that simple outright gifts, whether direct or in trust, can be an efficient mechanism for transferring the desired amount of wealth without the need for greater sophistication. Determining the appropriate assets to transfer, however, is not always clear. From the perspective of tax efficiency, the leading gift candidates are those assets that are most likely to experience the greatest amount of post-transfer yield (in this sense, yield includes income production and appreciation). Successful transfers may not only bestow the greatest value upon your donee(s); they also may remove the assets with the most growth potential from your estate, thus potentially reducing your future transfer tax exposure.

An advantage to giving in trust

Leveraged gift transfers

Valuation considerations

Thinking outside the box

Consider paying gift taxes currently

Familiar landscape. New opportunities. Where do you start?
Familiar concepts, larger scale

Valuation considerations

Minority interests in closely held businesses, fractional interests in real estate, interests in entities owning significant real estate holdings, interests in private equity funds or other investment entities, and perhaps even interests in family-owned investment entities, may serve as successful candidates for gift giving since such interests are often value stressed. Specifically, many of the interests mentioned above are valued at less than a proportionate fair market value of the enterprise or the asset itself, and therefore are susceptible to IRS scrutiny.

Ultimately, however, whether a gift transfer is successful or not is determined by whether the enterprise is successful (for example, by appreciating and or generating income, which it distributes to its owners) after the transfer date. Even if you prevail with respect to a modest valuation determination, such discounts only reduce the threshold for success or, in the alternative, reduce the tax cost of the transfer if the enterprise is not ultimately successful.

One caveat: When giving assets other than cash, the donee’s basis in the assets received is the donor’s basis. Thus, if the basis is very low relative to fair market value, the immediate disposition of the asset after the gift will result in after-tax proceeds much less than the reported gift. Some consideration must be given to what the donee is likely to do with the property received; and, if it is likely to be disposed of, when that disposition might occur.

An advantage to giving in trust
Wealth transfer planning
Familiar concepts, larger scale

An advantage to giving in trust
Do not overlook the wealth transfer advantages of transfers made in favor of trusts determined, for income tax purposes, to be grantor trusts. Such trusts require the donor to report the income tax attributes of the trust, and pay any related income taxes, as if the donor were the legal owner of the trust’s assets. This allows the grantor trust to grow unencumbered by income taxes and, because the related tax payments are the primary obligation of the grantor, paying the taxes is not considered a separate indirect gift and is not the subject of a further gift tax.
Wealth transfer planning

Consider paying gift taxes currently

Except for one year, 2010, the current 40 percent transfer tax rate is the lowest it has been since former president Franklin D. Roosevelt’s first term. Given the variation in the top transfer tax rates over the last century, whether the current 40 percent rate will remain in place is speculative. Family wealth is ultimately enhanced when taxed at the lowest possible rate. Although perhaps counterintuitive, this conclusion remains true even considering the time value of money. Furthermore, the gift tax is “tax exclusive,” meaning that the funds used to pay the tax are not subject to gift tax. The same is not true of the estate tax—which is “tax inclusive.” The estate tax is levied against the value of the gross estate, including the funds that will be used to pay the tax. The sidebar illustrates both principles noted above.

### Making gifts large enough to pay gift tax—The Bold Play

Estate tax transfers are currently subject to a 40% effective transfer tax rate, but lifetime transfers experience an effective tax rate of 28.57%. The difference is that the wealth used to pay the gift tax isn’t also subject to tax. Let’s illustrate this concept with a hypothetical $100 bundle of assets to transfer (from which taxes will also be paid). As shown below, paying gift tax can actually increase the family’s retained wealth by 19.05%.

<table>
<thead>
<tr>
<th>Lifetime Transfer</th>
<th>Transfer at death</th>
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</thead>
<tbody>
<tr>
<td>$28.57</td>
<td>$40.00</td>
</tr>
<tr>
<td>$71.43</td>
<td>$60.00</td>
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</tbody>
</table>

This is the result a taxpayer making a gift can expect if she lives for an additional three years following the gift.

<table>
<thead>
<tr>
<th>Transfer at death</th>
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<tbody>
<tr>
<td>$80.00</td>
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<tr>
<td>$120.00</td>
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</table>

This is the result, under current law, if those same assets are held until death.

The time value of money does not change the conclusion that it is better to pay gift tax now. Let’s assume the same hypothetical $100 bundle of assets to transfer (from which taxes will be paid), and that:

- The 40% rate remains constant, and
- We know with certainty that the assets transferred today will double in value prior to the donor’s death.

<table>
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<tr>
<td>$71.43</td>
<td>$120.00</td>
</tr>
</tbody>
</table>

This is the result a taxpayer making a gift can expect. On the date of the donor’s death, the beneficiaries’ assets would be worth $142.86 (2 x $71.43).

This is the result if those same assets were held until death, which indicates that the inherited assets are worth $120.

Paying gift tax currently still increases the family’s retained wealth, even if rates remain unchanged, by 19.05%.
Wealth transfer planning

Thinking outside the box

Net gifts and bargain sales
A net gift is a gift conditioned on the donee paying the related gift tax. It is called a net gift because the amount subject to tax is the net of the value of the property transferred less the amount that the donee will reimburse the donor.

A net gift can be useful when you want to make a significant transfer but lack the liquidity to pay the resulting tax or are unwilling to bear the tax burden; or, in situations where the asset being transferred is illiquid and the donee is better positioned to shoulder the burden of paying the related gift tax. The net gift, however, also introduces a second caveat to its ultimate effectiveness in preserving family wealth: The net gift does not give rise to an offsetting income tax liability (that is, a net gift is treated as a bargain sale, thus a gift of property that has little or no basis may give rise to a significant income tax obligation depending on the nature of the asset transferred).

Renouncing interests in trusts
In the current economic environment, under certain circumstances, it may be favorable to renounce all or part of an interest in an existing marital trust, including a qualified terminable interest property (QTIP) trust. A renunciation of an interest in a QTIP trust is considered to be a gift by the beneficiary spouse, who is obligated to pay the gift tax, on the value of the trust’s assets; however, the donees (the remainderman of the trust) must reimburse the renouncing beneficiary spouse for the gift tax properly apportioned to the value of the remainder interest. Valuation considerations in conjunction with the low prevailing interest rates have made the economics of renouncing an interest in a QTIP trust relatively more appealing because the amount of gift tax properly apportioned to the income interest—the portion of the gift tax that the renouncing spouse is not required to reimburse—is disproportionately low. Note that one need not renounce the whole trust. If supported by state law or the provisions of the trust, one can sever a QTIP trust into two or more identical trusts that are funded disproportionately. After such a severance, the renunciation would be made only of the trust holding the assets in which there was no longer any interest.

The next installment of the Guide will discuss more subtle uses of the enhanced exclusion—including “tuning up” prior planning transactions and transfers structured to avoid “donor’s remorse” and transfer that concentrate on the generation-skipping transfer tax.
Globalization

The increasingly borderless world. Globalization is unstoppable.

Today, with companies and businesses expanding their footprints, workforces, and talent, and investment capital becoming more mobile, globalization is unstoppable. The world we live in is increasingly borderless. It is no longer uncommon to see cross-nationality marriages, members of the same family living in different countries, or individuals living in one country but working in another. Moreover, the changes wrought by the 2017 Tax Act significantly altered the international tax landscape. As a result, understanding how to manage global tax obligations effectively is becoming increasingly important for many individuals and families.
Globalization

Globalization in action

Global migration

- Globally, there were 258 million international migrants in 2017.²
- Between 1990 and 2017, the number of international migrants worldwide rose by more than 105 million, or 69 percent. Much of this growth occurred between 2005 and 2017, when some 5.6 million migrants were added annually, compared to an average of 2.5 million from 1990 to 2005.²
- In the United States, more than 1.1 million persons obtained permanent resident status in 2017.³
- There were 181.1 million nonimmigrant entries in the United States in 2017.³
  - More than 3.9 million were temporary workers and their families,
  - More than 970,000 were intracompany transferees,
  - More than 490,000 were treaty traders and investors,
  - More than 8.4 million were temporary visitors for business.⁴
- In 2017, more than 5,000 people renounced their US permanent resident status by giving up their green cards.⁵

Globalization

Globalization in action

Direct investment and activities of multinational enterprises

In 2018, the US direct investment abroad position, or cumulative level of investment, decreased $62.3 billion to $5.95 trillion at the end of 2018, from $6.01 trillion at the end of 2017. The foreign direct investment in the US position increased $319.1 billion to $4.34 trillion at the end of 2018, from $4.03 trillion at the end of 2017.6

Source: US Bureau of Economic Analysis

Globalization

Globalization in action

Effects of the 2017 Tax Act on US direct investment abroad

The 2017 Tax Act generally eliminated taxes on dividends, or repatriated earnings, to US multinationals from their foreign affiliates. Dividends of $776.5 billion in 2018 exceeded earnings for the year, which led to negative reinvestment of earnings, decreasing the investment position for the first time since 1982.

By country, nearly half of the dividends in 2018 were repatriated from affiliates in Bermuda ($231.0 billion) and the Netherlands ($138.8 billion).7

<table>
<thead>
<tr>
<th>US direct investment abroad: Dividends by country of affiliate: 2017–2018</th>
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<tbody>
<tr>
<td>Country</td>
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<tr>
<td>Bermuda</td>
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<td>Netherlands</td>
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<td>Ireland</td>
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<td>United Kingdom</td>
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<td>Switzerland</td>
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<tr>
<td>Luxembourg</td>
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<tr>
<td>UK Islands, Caribbean*</td>
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<tr>
<td>Hong Kong</td>
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</tbody>
</table>

* Includes British Virgin Islands, Cayman Islands, Montserrat, and Turks and Caicos Islands

Source: US Bureau of Economic Analysis

Globalization

What’s new?

Under prior law, the federal tax on unremitted earnings of certain foreign corporations was generally deferred until the earnings were repatriated. The international tax landscape has changed dramatically as a result of the 2017 Tax Act. These new rules triggered an initial tax on untaxed earnings of certain foreign corporations (the “transition tax”) and imposed an annual tax on global intangible low-taxed income (GILTI) of controlled foreign corporations (CFCs). Additionally, the 2017 Tax Act expanded passive foreign investment company (PFIC) rules and the CFC rules for ownership of a foreign corporation, which may result in additional and more complex reporting.

Expanded CFC rules

The 2017 Tax Act included changes to the definitions of “US shareholder” and “controlled foreign corporation” that impact not only GILTI and transition tax, but also traditional Subpart F inclusion rules. Previously, a US shareholder was defined as a US person who owns directly, indirectly, or constructively, 10 percent of the voting power of the stock in a foreign corporation. The 2017 Tax Act modified this definition such that a US person who owns directly, indirectly, or constructively, 10 percent or more of total value of the stock of a foreign corporation is now also a US shareholder. Additionally, the previous version of the constructive ownership rules prevented a US person from being attributed stock owned by a non-US person. In general, the new law removes this restriction and allows for “downward attribution” from a foreign person to a related US person. Note, however, that the new rule does not apply in the case of stock owned by a nonresident alien spouse; such stock is still not attributed to a US person. Under current law, many foreign corporations that were not previously CFCs may now be CFCs. Consequently, US persons should reevaluate whether they are now US shareholders of a CFC and therefore subject to additional US income and reporting requirements.

Transition Tax

The transition tax is imposed on a one-time deemed repatriation of accumulated post-1986 net earnings of the relevant foreign corporation. The transition tax applies to US shareholders owning 10 percent or more of a foreign corporation that is a CFC, or 10 percent owners of foreign corporations where at least one domestic corporate shareholder is a direct, indirect, or constructive owner. Generally, the transition tax applies to tax year 2017, but may apply to 2018 to the extent the taxpayer has an interest in a specified foreign corporation with a fiscal year-end. For the 2017 tax year, the effective transition tax rate (assuming a top marginal rate of 39.6 percent) for individuals, trusts and estates with respect to calendar-year corporations was 17.54 percent to the extent the foreign corporation’s accumulated earnings consisted of cash and cash equivalents and 9.05 percent for noncash assets. For the 2018 tax year, the effective transition tax rate (assuming a top marginal rate of 37 percent) for individuals, trusts and estates with respect to fiscal year-end corporations was 27.3 percent to the extent the foreign corporation’s accumulated earnings consisted of cash and cash equivalents and 14.1 percent for noncash assets. Taxpayers may elect to spread the payment of the tax over eight years. A special rule permits deferral of the payment of the transition tax liability for S corporation shareholders until a triggering event occurs.
Globalization
What’s new?

Global intangible low-taxed income (GILTI)
GILTI requires an annual computation and may cause a portion of a CFC’s earnings to be included in a US shareholder’s income tax return for tax year 2018 and thereafter. Application of the GILTI provisions can have adverse implications to individuals, trusts, and estates for several reasons including, but not limited to:

• The income inclusion will frequently be “phantom income” (a tax attribute not represented by a cash distribution);
• Unlike corporations, individuals, trusts, and estates cannot claim a deduction for 50 percent of their GILTI inclusion and underlying foreign tax credits to offset the US tax liability;
• The income inclusion does not qualify for the 20 percent qualified dividend tax rate; and
• Generally, noncorporate US taxpayers will pay a current tax on GILTI at a rate of up to 37 percent (or the highest marginal rate).

Taxpayers that are less than 10 percent US shareholders of a CFC are not subject to the GILTI provisions. There are certain elections available to mitigate the tax consequences of GILTI and the transition tax, as such, taxpayers should consult with their tax advisers to understand the implications of making such elections.

Other considerations
The changes to the international provisions as a result of the 2017 Tax Act have significantly increased the US reporting requirements for US persons with investments in foreign corporations. Compliance with such reporting will likely require additional analysis and taxpayers might now have more reportable entities than they did in the past. Along with the federal implications of GILTI and the transition tax, state tax implications and reporting should also be analyzed.

In addition to the various changes to the US law, taxpayers should consult with their local advisers on the changes to relevant non-US jurisdictions. The Economic Substance (Companies and Limited Partnerships) Act of 2018 is effective as of January 1, 2019, in many offshore jurisdictions; this legislation requires certain legal entities to establish sufficient economic substance and imposes additional reporting obligations on those entities.

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Globalization

Key questions to ask in a global context

If you and your family are thinking of joining the globalization trend and moving and/or investing internationally, consider these questions:

- How will you manage investment, legal, immigration, tax, and accounting issues?
- What types of investment vehicles should you consider?
- Should potential estate taxes or inheritance taxes affect the structuring of your international investments?
- What are some of the tax considerations for non-US families making US investments?
- What are the potential issues for US families making investments in foreign countries?
- What effect does family mobility have on investment planning and taxation?
- Do you understand how to comply with your US and foreign country tax obligations?
- Do you know what your overall tax position will be across the globe?
- How will the 2017 Tax Act have an impact on your global structure and cash flow?
- Are you considering selling or expanding your business or investing in new foreign investments?
- What are the considerations involved with moving your non-US business onshore?
Globalization

Cross-border income tax considerations

Inbound considerations
If you are not a US citizen and you are moving to or investing in the United States, how you are taxed depends on your US tax residency status.

Obtaining a green card is one way to establish US tax residency. The other way is to meet the substantial presence test. The substantial presence test is defined as being physically present in the United States for at least:

- 31 days during the current year, and
- 183 days during the three-year period, which includes the current year and the two years immediately preceding the current year, by adding together the following:
  - All the days you were present in the United States in the current year,
  - One-third of the days you were present in the first year before the current year, and
  - One-sixth of the days you were present in the second year before the current year.

Once you become a US resident, you will be subject to US tax on your worldwide income in the same way as a US citizen. You may still have significant economic ties in your home country; for example, bank accounts, investments, stock holdings in companies, pensions, and trusts. The United States has certain “anti-deferral” rules and some of your investments, although they may be tax favorable in a foreign jurisdiction, could give rise to adverse US tax consequences. You will also need to be aware of the various US information-reporting obligations that may apply, as failure to fulfill these obligations could result in significant penalties. As discussed above, the 2017 Tax Act has layered on additional complexities in this arena. It is important to note that although you are treated as a US tax resident, you may continue to be a tax resident in your home country (that is, you may be a “dual resident” taxpayer) and/or you may be required to continue filing a tax return in your home country.

Once you become a US resident, you will be subject to US tax on your worldwide income in the same way as a US citizen.

Anyone who is not a US tax resident is referred to as a “nonresident alien.” As a nonresident alien you are generally taxed in the United States only on income from US sources. In some circumstances, even if you meet the substantial presence test, you may be treated as a nonresident alien due to the application of certain exceptions or by application of an income tax treaty between the United States and a foreign country.

Most of the individual states in the United States impose income tax. Some US cities and localities also impose income tax. Given that states have varying definitions of residency, tax rules, and tax rates, it is important to understand the tax rules for the state you are moving to or investing in. Generally, if you are a tax resident in a state, you are taxed in that state on your worldwide income. If you are a nonresident, you are generally only taxed on your income sourced from the state.

When moving to or investing in the United States, you will also want to consider the impact in your home country:

- What is your residency status in your home country?
- Will you need to continue paying tax or filing tax returns there?
- If you are required to pay tax in both your home country and the United States, will you be taxed twice?
- Does the domestic legislation in the United States or in your home country provide relief for double taxation?
- Is there an income tax treaty between the United States and your home country?
- Does the state you are moving to or investing in give you the benefit of the tax treaty at the state level?
Globalization

Cross-border income tax considerations

There are many issues to consider when you want to move to or invest in the United States. Various actions that you take may affect the amount of taxes you pay in the United States and your reporting obligations. Tax planning, therefore, is not only essential from a US tax perspective but also in determining a tax-efficient global tax position. It is important to seek qualified tax advisers who can help you navigate the rules and requirements in both the United States and your home jurisdiction.

Outbound considerations

If you are a US citizen or a green card holder, you are subject to US tax on your worldwide income regardless of where you live. Your US filing and reporting obligations do not stop when you move to a foreign country. On the contrary, they tend to become more complex.

If you establish a business or make investments in a foreign country, you may have additional information-reporting obligations in the United States. US tax rules may also affect some types of investments and entity structures. If you are considering buying or selling a business in the United States or overseas, there are various considerations, such as the impact on valuation, cash flow, business structure, and whether the buyer/seller would have additional reporting obligations. It is therefore important to consult with your tax adviser before you take action to understand the potential tax consequences and possible tax-efficient alternatives.

You may establish residency and be subject to tax in a foreign country. The foreign country may provide relief for double taxation in its domestic legislation or may have an income tax treaty with the United States, which may also help reduce double taxation. However, the foreign country may tax your US investments differently than the United States will, and there may still be situations in which you are taxed twice if appropriate planning has not been implemented.

If you are leaving the United States and you do not hold a green card or US citizenship, you may cease being a US resident in the year of departure or the year after your departure if your later trips back to the United States are minimal (that is, no longer meeting the substantial presence test). You may still have US filing obligations after you become a nonresident alien if you receive US effectively connected income (ECI)—that is, income arising from the activities of or assets used in a US trade or business. Examples of ECI include compensation for personal services performed in the United States, income and profits from the operation of a trade or business in the United States, and income from the disposition of US real property. Certain other types of income may be subject to US income tax, but the tax may be satisfied by withholding (for example, dividends from a US corporation).

Surrendering your green card will cause you to be considered a nonresident alien for US income tax purposes. If you spend substantial time in the United States after surrendering your green card, you may again become a US resident under the substantial presence test. Upon surrendering your green card, you will need to consider whether you are subject to the US expatriation tax or “exit tax.”

As mentioned earlier, states have varying rules, and it is important to understand the state tax implications when you move out of the United States, including how and when you may become a nonresident in your former resident state.
Globalization

Estate and gift tax considerations

Whether and how your assets are subject to US estate and gift taxation depends on your domicile status.

**Domiciliaries**

Determining domicile for US estate and gift tax purposes is different than determining US income tax residence status (discussed above). You are considered to be domiciled in the United States for estate and gift tax purposes if you live in the United States and have no present intention of leaving. Thus, you may be a resident for income tax purposes, but not US domiciled for estate and gift tax purposes.

**Facts and circumstances test**

To determine whether you are a US domiciliary, the following factors are considered:

- Statement of intent (for example, in visa applications, tax returns, or a will)
- Length of US residence
- Green card status
- Style of living in the United States and abroad
- Ties to former country
- Country of citizenship
- Location of business interests
- Places where club and church affiliations, voting registration, and driver’s licenses are maintained

For details on how US estate and gift tax applies to you as a US domiciliary, please refer to the Wealth Transfer Planning chapter of the Guide.

It is possible that two or more countries will consider you a domiciliary and/or that certain assets may be subject to estate or gift tax in more than one country.

As of March 22, 2019, the United States has entered into estate and/or gift tax treaties with 16 jurisdictions. Tax treaties may define domicile, resolve issues of dual domicile, reduce or eliminate double taxation, and provide additional deductions and other tax relief.

For details on how US estate and gift tax applies to you as a US domiciliary, please refer to the Wealth Transfer Planning chapter of the Guide.

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Globalization

Estate and gift tax considerations

Non-US domiciliaries
You are considered a non-US domiciliary for estate and gift tax purposes if you are not considered a domiciliary under the facts and circumstances test described above.

As a non-US domiciliary, you are taxed only on the value of your US situs tangible and intangible assets owned at death, and on the value of your US situs tangible assets gifted during your lifetime, with a maximum tax rate of 40 percent. An exemption of $60,000 is available, but only for transfers at death. US situs tangible assets generally include real and tangible personal property located in the United States and business assets located in the United States; US situs intangible assets include stock of US corporations. The definition of US situs assets may be modified by an applicable estate and/or gift tax treaty.

US citizens with noncitizen spouses
There are additional estate and gift tax considerations when only one spouse is a US citizen.

An unlimited amount can be gifted tax-free to a spouse who is a US citizen, whereas gifts to a noncitizen spouse are taxable to the extent they exceed an annual exclusion amount ($155,000 for 2019, indexed annually). US citizens and domiciliaries can also “gift split,” allowing married donors to exclude up to $30,000 per donee per year (for 2019, indexed annually). Gift splitting is not permitted if either spouse is a non-US domiciliary.

When both spouses are US citizens, an unlimited amount of assets can pass between them without being subject to US estate tax. An election can also be made on a timely filed estate tax return to pass any remaining exemption amount to the surviving spouse for use in addition to his or her own exemption. If your surviving spouse is not a US citizen, the marital deduction is generally not allowed. However, a deferral of US estate tax for assets passing to a noncitizen surviving spouse may be obtained if the US property passes through a qualified domestic trust. Some estate and gift tax treaties also allow for some form of a marital deduction in cases where such a deduction would not normally be available.

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Globalization

Thinking ahead

As companies and individuals are increasingly globally mobile, more and more people will be affected by multinational tax rules. Individuals and families moving and/or investing internationally need to have a clear understanding of the potential tax implications. Taxpayers with existing international assets and investments will need to reevaluate their positions in light of the 2017 Tax Act, which for many will result in additional and more complex reporting. Before deciding on a path forward, it is important to seek professional tax advice in order to understand how your US tax obligations interact with foreign country tax obligations and what your global tax position will look like.

How Deloitte can help

With nearly 44,000 tax professionals in 169 countries, Deloitte has been discreetly serving high net worth individuals, families, and their enterprises for more than 100 years. As a trusted adviser to many of the world’s most affluent families, family offices, and private trust companies, we bring significant experience and integrated service capabilities to our clients. We provide a global network of resources and a world-class level of knowledge and experience tailored to each family’s unique and personal circumstances.

The increasingly borderless world. Globalization is unstoppable.

Globalization in action

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EMEA

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9,680
Tax policy update

Divided government isn’t pretty

We are now more than six months into the first session of the 116th Congress, with the House under Democratic control and the Senate and White House in the hands of Republicans. Lawmakers have an IRS reform bill (H.R. 3151) that makes taxpayer-friendly changes in the areas of enforcement, appeals, and customer service; lays out a path for reorganizing the agency and modernizing its information technology infrastructure; and provides new protections for taxpayers who are victims of tax-related identity theft. But the lack of progress on other issues—such as extenders, retirement savings reform, and technical corrections to the 2017 Tax Act—reflects the realities of moving significant tax legislation in a divided government.
There is support in both chambers for addressing some two dozen temporary tax deductions, credits, and incentives that expired in 2017 and 2018, along with a handful of others that are set to lapse at the end of this year. The list of so-called “extenders” provisions includes, among others, the New Markets Tax Credit, the Work Opportunity Tax Credit, credits for qualified fuel cell vehicles and two-wheeled plug in vehicles, and the deduction for qualified tuition and related expenses.

The House Ways and Means Committee approved legislation (H.R. 3301) in June that would extend the bulk of the expired and expiring provisions through 2020. For their part, Senate Finance Committee Chairman Charles Grassley, R-IA, and ranking member Ron Wyden, D-OR, unveiled a proposal in late February that would renew the now-expired 2017 and 2018 extenders through the end of this year, however, that proposal has not yet been taken up by the full committee.

Assuming these two measures move through their respective chambers as currently drafted, the biggest threat to eventual House-Senate negotiations on a compromise bill will be disagreements over whether to offset the cost of renewing the temporary provisions. Republicans have traditionally argued that extensions of current law need not be paid for, and the Finance Committee proposal includes no offsetting revenue raisers. But Democrats on the House Ways and Means Committee, led by Chairman Richard Neal of Massachusetts, are insisting that extenders legislation should be fully offset, and they have included in their bill a provision that would accelerate by three years (to 2022) the scheduled expiration of the increased estate and gift tax exemption that was enacted in the 2017 Tax Act. The 2017 Tax Act provision, which basically doubled the prior-law estate tax exemption amount, is currently set to lapse at the end of 2025, along with other tax relief for individuals and pass-through entities.
In May, the House overwhelmingly approved bipartisan legislation (H.R. 1994) that generally would make it easier for smaller businesses to offer tax-qualified retirement savings plans to their employees, encourage individuals to participate in retirement plans, and promote savings for certain nonretirement expenses. The measure—which is substantially similar to a bipartisan retirement savings bill that Senate Finance Committee leaders Charles Grassley and Ron Wyden unveiled earlier this spring—also includes revenue-raising provisions that, among other things, would in certain cases accelerate distributions of retirement account assets after an account holder’s death.

The bill, as approved, also would repeal a change to the “kiddie tax” enacted in the 2017 Tax Act that requires unearned income of children to be taxed at the rate for estates and trusts rather than their parents’ top marginal rates, as was the case under prior law. The provision in the House bill would reinstate the prior-law kiddie tax rules. Lawmakers added the kiddie tax provision to the retirement savings bill in the wake of news reports revealing that the 2017 Tax Act change, which was intended to discourage wealthy individuals from making tax-motivated transfers of investment income to their minor children, also ensnared unearned income received by children in less affluent families—for example, survivors’ benefits paid to children of deceased active-duty military service members and first responders—leaving those families facing significantly higher tax rates on that income than they would have before the 2017 Tax Act was enacted.

Senate leaders had hoped to bring up the House-passed bill and approve it under expedited unanimous consent rules before the Memorial Day recess. But that plan was scuttled after various GOP senators raised objections to specific retirement security provisions, such as funding relief for pension plans sponsored by financially struggling community newspapers. It is currently unclear how Senate leaders intend to proceed. Finance Committee Chairman Grassley has indicated that they are exploring all options for getting the bill through the chamber, including convincing individual lawmakers to release their respective holds and then moving it under unanimous consent, attaching it to a must-pass legislative vehicle (such as one of the upcoming spending bills for fiscal year 2020), and bringing it to the Senate floor under an agreement that would allow for consideration of a limited number of amendments.
The kiddie tax issue that House lawmakers addressed in their retirement savings legislation is just one example out of dozens of emerging drafting errors and assorted technical glitches in the 2017 Tax Act that have led to unintended consequences for taxpayers. From a purely partisan standpoint, fixing those problems through what are known as “technical corrections” is among the most divisive issues facing the current Congress.

Advancing 2017 Tax Act technical corrections has been a top priority for congressional Republicans, who were responsible for drafting the underlying legislation and moving it under “budget reconciliation” protections that allowed it to clear the Senate with a simple majority vote rather than the three-fifths supermajority required to overcome procedural hurdles that normally arise in that chamber. In the waning days of the 115th Congress, then Ways and Means chairman Kevin Brady, R-TX, released draft technical corrections legislation that proposed modifications to dozens of 2017 Tax Act provisions as well as to other recently enacted tax laws.

But Democrats—who contend that they were shut out of the 2017 Tax Act drafting process and were given little opportunity to amend the legislation as it moved through the GOP-controlled Congress in 2017—have been reluctant to move a large technical corrections package. Indeed, since he took the Ways and Means gavel in the 116th Congress this past January, Democratic Chairman Richard Neal has maintained that technical corrections will have to wait until the panel holds hearings on the 2017 Tax Act and explores policy questions that he argues should have been considered as the law was being drafted and vetted in committee.

During the markup of the Ways and Means Committee’s tax extenders bill in June, Chairman Neal dangled the prospect of legislative action on technical corrections sometime this year. But since then he has not elaborated on the timing or scope of a possible legislative package.
The debate over these legislative issues is likely to extend into the fall. Over the longer term, as we continue to move closer to the 2020 election cycle, we also can expect increasing calls from the GOP to permanently extend the individual and pass-through provisions in the 2017 Tax Act. Democrats can be expected to oppose that effort, likely citing recent estimates from the Joint Committee on Taxation staff indicating that making these provisions permanent would cost nearly $920 billion over 10 years. Moreover, we likely will hear continued calls from Democrats to scale back or eliminate some of the 2017 Tax Act provisions that they believe are disproportionately skewed to corporations and wealthy individuals. The proposed estate tax clawback (as described above) in the Ways and Means Committee extenders bill is just one example of the types of Democratic proposals that could emerge in the months ahead.

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