

TYPES NOT MAPPED YET March 23, 2018 | TTR not mapped yet | Sarah J. Chang

The tax laws changed. Should your business and estate plans change too?

On January 1, 2018, the most significant changes to the U.S. tax code in 30 years took effect. While the permanency of these changes varies, they are all currently scheduled to continue until at least 2026, which is long enough to warrant considering whether your business and estate plans remain prudent. If you answer “I don’t know” or “no” to any one or more of the following questions, we suggest you consult your estate planning or corporate attorney for further advice.

- 1. Review Your Estate Plan for Income Tax Planning:** Does your estate plan maximize both estate and income tax planning? With a near doubling of the estate tax exemption amount (currently \$11,180,000 per person and more than \$22,000,000 per married couple) your estate plan may still work from an estate tax planning perspective, but it may not maximize income tax planning. Old (and even relatively recent) “standard” plans may result in an increased income tax burden on your descendants because of the creation of a “bypass” (a/k/a “credit shelter” and “family”) trust at the first spouse’s death that will prevent a step-up in basis when the surviving spouse dies.
- 2. Determine What Business Entity is Best:** Is your current business entity in the most tax-efficient form? Corporate tax rates have been reduced from 35% to 21%. As discussed below, certain individuals, trusts, and estates that are equity holders in pass-through entities (other than corporations) may be eligible for a deduction of up to 20% on qualified business income. Alternate minimum tax for corporations has been repealed.
- 3. Maximize Business Deductions for Pass Through Entities:** Is your business structured so as to obtain the greatest “qualified business income” deduction possible? In the case of certain individuals, trusts, and estates that are equity holders in pass-through entities (i.e., businesses that are not corporations), a deduction up to 20% is now available on such holder’s allocable share of a pass-through entity’s qualified business income (i.e., generally profits from the active income and expenses from the operation of a qualified trade or business). This deduction is reduced, and even eliminated, when an equity holder’s taxable income is from certain types of businesses and greater than certain threshold amounts.
- 4. Bunch Deductions:** Have you thought about “bunching” certain deductions into one year to forego the standard deduction for that year and reduce your tax liability? The 2018 tax year standard deduction for personal income taxes has been increased to \$12,000 (\$24,000 for married couples), but personal and dependent exemptions have been eliminated, many miscellaneous itemized deductions are disallowed, and the deduction for state and local income, sales, and property taxes has been limited to \$10,000 annually (regardless of marital status). Consequently, more people will find themselves taking the standard deduction instead of itemizing.
- 5. Reconsider Gifting:** Have you thought about gifting your business interests to your descendants or planning for a liquidity event? The gift and estate tax exemption amounts nearly doubled, but in 2026 they are scheduled to return to \$5,000,000, as indexed for inflation since 2010. The adjusted gross income limit for cash contributions to qualified charities increased from 50% to 60%. Perhaps now is a good time to remove some of your assets (and all post-transfer growth) from your estate. Not all gifting precludes you from ever having the benefit of some or all of the assets or income therefrom. Perhaps your charitable gifts should be made in cash or “bunched” so as to maximize your deductions and credits.

Sarah Chang counsels clients in developing comprehensive estate plans through the use of wills, trusts, powers of attorney and charitable giving strategies.



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