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Charitable Strategies Remain for Tax-Minded Donors

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The following article was featured in the November 2018 edition of *Legacy*, the Vorys newsletter focused on wealth planning.

The Tax Cuts and Jobs Act that was signed into law at the end of 2017 made sweeping changes to many laws affecting donors. For example, the standard deduction was doubled. It is now $12,000 for single filers and $24,000 for a married couple filing jointly. This change, combined with the $10,000 limit on state and local tax deductions and the elimination of other deductions means that many donors will no longer itemize deductions. While this eliminates one tax incentive for many donors to make charitable contributions, other gifting strategies remain available to donors to maximize their tax benefits while supporting their favorite charities.

1. Gifts of Appreciated Property: Donors can still eliminate capital gains by making charitable contributions of appreciated long-term securities or real estate. In addition, donors who itemize deductions may also generally take a deduction equal to the fair market value of the gifted property.

2. IRA Charitable Rollover: Donors over the age of 70½ who have not yet taken the required distribution from their IRA may direct a tax-free transfer of up to $100,000 to a public charity.

3. Bunching Gifts: Donors may consider combining multiple years of their typical charitable gifts into one year, also referred to as "bunching," such that their deductions will exceed the standard deduction amount in one year and therefore itemizing deductions will result in greater tax benefits.

1. *Donor-Advised Funds:* An alternative to paying such bunched gifts directly to charitable organizations in one year is to establish and fund a donor-advised fund (DAF). A DAF is a charitable vehicle established at a public charity that allows donors to make a significant charitable contribution into the DAF and then make non-binding recommendations for grants from the DAF to other charities over time. Donors receive the benefit of an immediate

income tax charitable deduction (assuming they itemize) upon the initial contribution to the DAF and assistance with fund administration and investments. Donors may then make contributions from the DAF to their designated charities over time. An added benefit is that DAF contributions may grow tax-free over time.

2. *New Increased Cap for Cash Gifts:* Donors who itemize deductions may now generally deduct up to 60 percent of AGI (increased from 50 percent) for charitable contributions made in cash.

4. Retirement Plan Assets at Death: By designating charitable organizations as beneficiaries of a retirement plan rather than individuals, such assets will not be subject to income tax with respect to the beneficiaries.

5. Consider Lifetime Gifts Versus Testamentary Gifts: Donors with assets well below the federal estate tax exemption amount[1] who make gifts of non-retirement plan assets to charity after their death will not receive any estate tax benefit at death and may not receive any income tax benefits. If such donors can afford to make some or all of such gifts during their lifetime, they may be able to better utilize the income tax deduction.

6. Charitable Trusts: Charitable remainder trusts (CRTs) and charitable lead trusts (CLTs) continue to be available for donors to provide payments to noncharitable and charitable beneficiaries while potentially receiving income, estate and gift tax benefits.

1. CRTs provide annual payments to non-charitable beneficiaries for a certain term, and at the end of the term, the balance in the CRT passes to one or more designated charitable organizations. An income tax deduction is available for a portion of the contribution to the CRT in the year the CRT is established, and the balance that passes to the charities at the end of the term will be excluded from the donor's estate. CRTs are typically funded with appreciated assets because CRTs are tax-exempt and will generally not have capital gain on the sale of such assets. This preserves the entire asset value for the beneficiaries.
2. CLTs can be funded during lifetime or at death. CLTs provide annual payments to one or more designated charitable organizations for a certain term, and at the end of the term, the balance in the CLT passes to or is held in trust for the benefit of noncharitable beneficiaries. CLTs are most commonly used for estate and gift tax planning purposes; however, depending on the type of CLT, the donor may be entitled to income tax benefits as well.

Conclusion

While many donors will no longer itemize deductions, philanthropic individuals continue to have a variety of gifting strategies to achieve tax benefits while also benefiting their favorite charitable organizations. Contact your Vorys attorney if you are considering year-end charitable gifts.

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[1] The federal estate tax exemption for 2018 is $11.18 million per person. The exemption increases to $11.4 million per person in 2019 and is indexed for inflation through 2025. In 2026, the exemption will decrease to $5,000,000, indexed for inflation.