Year-End Charitable Giving

As we enter the fourth quarter of 2018, it's time to think about year-end income tax planning. While the Tax Cuts and Jobs Act passed at the end of 2017 reduced the scope and number of many tax deductions, it did not harm the charitable income tax deduction. In fact, in some cases, the charitable deduction is even more available than in years past.

Factors Affecting Deduction

An income tax deduction for gifts to charity depends on three primary factors:

1. **Donor's Income** – A donor's charitable income tax deduction is limited to a percentage of his or her adjusted gross income ("AGI") minus any net operating loss carrybacks. The tax law calls this a donor's "Contribution Base."
2. **Type of Charity** – There are generally two types of charitable organizations for purposes of the income tax deduction rules: (a) public charities and (b) private foundations.
3. **Type of Property Given** – The value of the charitable gift that might be deductible depends on the type of property given. The value of cash gifts is simply the face amount of the cash. For gifts other than cash, the value of the charitable gift is either the property's fair market value or its income tax basis.
   - **Capital Gain Property to Public Charities** A gift of *Capital Gain Property* to a public charity is valued at the property's fair market value. "Capital Gain Property" means property that would generate a long-term capital gain if sold by the donor at the time of the gift. Note that Capital Gain Property excludes tangible personal property that isn't used for the charity's tax-exempt purpose.
   - **Qualified Appreciated Stock to Private Foundations** A gift of *Qualified Appreciated Stock* to a *private foundation* will be valued at its fair market value. Qualified Appreciated Stock means publicly traded stock, mutual funds or ETFs that would generate a long-term capital gain if sold by the donor at the time of the gift.
   - **Other Gifts** – All other noncash gifts to charities generally are valued at their income tax basis.

Percentage Limitations

The value of gifts to charity that a donor can deduct each year is capped at a percentage of the donor's Contribution Base (a "Percentage Limitation"). The applicable Percentage Limitation depends on the kind of charity (public charity or private foundation) involved and the type of property given (cash or noncash). Donors may carry forward the income tax deduction lost by the Percentage Limitations for the next five years.

- **60% Percentage Limitation** – Applies to all cash gifts to public charities
- **50% Percentage Limitation** – Applies to all noncash gifts to public charities of property valued at its income tax basis
- **30% Percentage Limitation** – Applies to all gifts to (1) public charities of Capital Gain Property and (2) Private Foundations of cash or property valued at its income tax basis
- **20% Percentage Limitation** – Applies to all gifts to Private Foundations of Qualified Appreciated Stock

Note that the Tax Cuts and Jobs Act added the 60% Percentage Limitation category (cash gifts to public charities). Prior to the law change, cash gifts to public charities were part of the 50% Percentage Limitation category.

Elimination of "Pease Limitation"

Thanks to the Tax Cuts and Jobs Act, some donors may receive more income tax bang for their buck on charitable gifts than in years past.

Before passage of the Tax Cuts and Jobs Act, "high income" taxpayers could permanently lose a portion of many itemized deductions (including charitable gifts) due to a provision of the tax law called the "Pease Limitation." The Pease Limitation defined "high income" as follows:

- $320,000 of AGI for a married couple filing jointly,
- $293,350 of AGI for a head of household, and
- $266,700 of AGI for a single person who is not a surviving spouse.

These high-income taxpayers would lose a portion of their itemized deductions equal to the lesser of: (1) 3% of the excess of the taxpayer's AGI over the applicable high income threshold described above or (2) 80% of the taxpayer's itemized deductions.

For example, consider a married couple with $1,000,000 of AGI and $100,000 of charitable deductions. Under the Pease Limitation, this couple would have permanently lost $20,400 of their $100,000 charitable deduction, and that $20,400 could not be carried forward to future years. Thanks to the Tax Cuts and Jobs Act, this couple could receive the full benefit of their $100,000 charitable deduction.

Donor Advised Funds

Donors who want a charitable deduction for 2018 but don't yet know which specific charities to benefit should consider making a gift this year to a Donor Advised Fund ("DAF"). Texas Capital Bank's Private Wealth Advisors offers a Donor Advised Fund for clients through a partnership with the Southwest Community Foundation. A gift to a DAF is tax-deductible in the year the gift is made and is treated as a gift to a public charity. Yet, the funds can remain in the DAF until the donor decides which specific charities he or she wants to benefit. Assets inside the DAF account grow income tax-free.

Qualified Charitable Distributions

The Tax Cuts and Jobs Act also left intact IRA Qualified Charitable Distributions ("QCDs"), which allow certain taxpayers who are at least age 70½ to give up to $100,000 per year, tax-free, from an IRA to public charities so long as those QCDs are paid directly from the IRA to the public charity. Note that a gift to a donor advised fund will **not** qualify as a QCD.

A QCD offers IRA owners a number of potential tax benefits:

- Allows a donation to public charities from an IRA without paying taxes on the distribution;
- Reduces the IRA owner's taxable income by the amount of the QCD;
- Provides added tax benefit for gifts to charity for those who take the standard deduction (which deduction is now much greater under the Tax Cuts and Jobs Act);
- QCDs count toward an IRA owner's required minimum distribution;
- Reduces IRA owner's taxable income which, in turn, may reduce applicable tax rate and increase access to deductions, credits and various tax breaks;
- Potentially reduces the impact of the 3.8% surtax on net investment income; and
- Limits higher taxes on Social Security benefits and higher Medicare premiums due to an increase in taxable income.

We Can Help

We welcome the opportunity to help you implement your charitable giving strategy. Please talk with the Private Wealth Advisors team for guidance and assistance in executing your plan.