

CLIENT ALERT: New Treatment of Alimony under the New Tax Law



The Tax Cuts and Jobs Act (the “Act”) has made changes to the tax treatment of alimony that you will be interested in. These changes take effect for divorce agreements and legal separation agreements executed *after 2018*.

Current rules.

Under the current rules, an individual who pays alimony or separate maintenance may deduct an amount equal to the alimony or separate maintenance payments paid during the year as an “above-the-line” deduction. (An “above-the-line” deduction, i.e., a deduction that a taxpayer need not itemize deductions to claim, is more valuable for the taxpayer than an itemized deduction.)

And, under current rules, alimony and separate maintenance payments are taxable to the recipient spouse (includible in that spouse’s gross income).

New rules.

Under the Act rules, there is no deduction for alimony for the payer. Furthermore, alimony is not gross income to the recipient. So for divorces and legal separations that are executed (i.e., that come into legal existence due to a court order) after 2018, the alimony-paying spouse won’t be able to deduct the payments, and the alimony-receiving spouse doesn’t include them in gross income or pay federal income tax on them.

New rules don’t apply to existing divorces and separations. It’s important to emphasize that the current rules continue to apply to already-existing divorces and separations, as well as divorces and separations that are executed *before 2019*.

Some taxpayers may want the Act rules to apply to their existing divorce or separation. Under a special rule, if taxpayers have an existing (pre-2019) divorce or separation decree, and they have that agreement legally modified, then the new rules don’t apply to that modified decree, unless the modification *expressly provides* that the Act rules are to apply. There may be situations where applying the Act rules voluntarily

is beneficial for the taxpayers, such as a change in the income levels of the alimony payer or the alimony recipient.

If you wish to discuss the impact of these rules on your particular situation, please give us a call at 305-662-7272.