

December 22, 2017

Tax Reform Act Doubles Gift, Estate and GST Tax Exemptions

Congress has passed and President Trump has signed new tax reform legislation (the “Act”). Although the Act falls short of repealing the “death tax”, it doubles the amount an individual may transfer free of tax either by gift during lifetime or at death, rendering federal transfer taxes irrelevant for all but the wealthiest of Americans.

In 2017, an individual may give or transfer at death up to \$5,490,000 without paying estate or gift taxes. Under the Act, these amounts will more than double for 2018, jumping to approximately \$11,200,000 per person, or \$22,400,000 for a married couple.

The amount that an individual may protect from the federal generation-skipping transfer (“GST”) tax, a tax which is assessed when assets pass to grandchildren or the equivalent, will also be increased to \$11,200,000 per person under the Act.

The exemptions will continue to increase annually with inflation. In 2026, the exemptions will revert to their current levels (\$5,000,000 per person, adjusted for inflation).

The Act makes no other changes to the federal gift, estate and GST tax regimes, including the provision that permits the recipient of property transferred upon a donor’s death to “step up” the cost basis of the property to its fair market value on the donor’s date of death.

The increased exemptions available between 2018 and 2025 present compelling opportunities for some clients.

- For those married couples who have already made gifts using in full the current lifetime exemption, they now have an opportunity to make additional gifts of about \$11,000,000. For many this will mean adding property to trusts that they have already created, typically using both the lifetime gift and estate tax exemption and GST exemption to protect the trust property from future GST tax.
- Clients should consider other uses of additional exemption, including forgiving family indebtedness, unwinding installment sales to family members and trusts, and unwinding split-dollar life insurance programs.
- For residents of states such as Massachusetts that have an independent estate tax but no gift tax, property transferred by lifetime gift will avoid state level transfer taxation.
- Note that one trade-off for making a lifetime gift with appreciated property is that the opportunity for a basis step-up at death is lost; the recipient takes the property with the donor’s cost basis for income tax purposes.
- Clients for whom federal transfer taxes are no longer relevant should consider reworking tax and trust planning to eliminate unnecessary complexity or to move assets back into their estates to take advantage of the step-up in basis at death. However, many clients still need to consider the impact of state estate taxes.
- Estate plans should be reviewed if bequests at death are keyed to the estate tax or GST tax exemptions.

When legislation at the end of 2010 increased the lifetime gift exemption from \$1,000,000 to \$5,000,000 for what was originally a two-year period, we were concerned that the gift tax savings would be clawed back if the donor died

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when the estate tax exemption had reverted to \$1,000,000. The Act addresses this possibility, directing the Secretary of the Treasury to issue regulations that prevent such a claw back of tax savings in 2026 and later years when the gift and estate exemption is scheduled to return to its pre-Act level.

We would be happy to talk with you about the impact the Act may have on your situation and the opportunities it may present for you.