

CLIENT ALERT

2018 Estate, Gift and GST Tax Exemption Increases and Increase in the Annual Gift Tax Exclusion

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President Donald Trump signed tax legislation into law last week, ushering in several changes to the wealth transfer tax system, which will take effect on January 1, 2018. Under the new law, the federal estate, gift and generation-skipping transfer (“GST”) tax exemption amounts will increase to \$11,200,000 for individuals and \$22,400,000 for married couples, from \$5,490,000 and \$10,980,000, respectively, in 2017. These exemption amounts are scheduled to increase with inflation each year until 2025. On January 1, 2026, the exemption amounts are scheduled to revert to the 2017 levels, adjusted for inflation. The highest marginal federal estate and gift tax rates will remain at 40% and the GST tax rate will remain a flat 40%.

This significant and temporary increase in the exemption amounts presents a unique opportunity for estate planning. We recommend that you consider taking advantage of the increased gift tax exemption amount and possibly the GST tax exemption amount by making gifts to children and/or grandchildren either outright or to new or existing trusts. The increased gift tax exemption amount allows a married couple who previously used their full gift tax exemption amounts to transfer an additional \$11,420,000 to their descendants in 2018 without the imposition of federal gift tax. For New York residents, there is an additional benefit of giving the full federal exemption amount during life—such funds will not be subject to any New York gift tax or estate tax if you die after January 1, 2019, whereas they could be subject to New York estate tax if you own such assets at your death. The top New York estate tax rate is 16%; however, after taking into account the federal deduction for state estate taxes paid, the effective New York estate tax rate is approximately 9%.

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We also recommend that you review the terms of your Wills and Revocable Trusts at this time to ensure they remain in accordance with your wishes. Many Wills and Revocable Trusts create trusts that will be funded according to formula clauses tied to the exemption amount in effect on your date of death. If you die before 2026, these trusts may be funded with significantly larger amounts than you were anticipating when the documents were signed.

In addition to the increased exemption amounts discussed above, the amount each person may give annually to as many individuals as he or she desires without incurring a gift tax and without using any of the gift tax exemption amount will increase to \$15,000 in 2018 (up from \$14,000 in 2017). In other words, beginning in 2018, a married couple may make “annual exclusion gifts” of up to a total of \$30,000 to an unlimited number of recipients. If you would like to make annual exclusion gifts to a minor, you may wish to make these gifts to “Crummey” trusts or to UTMA or college savings accounts. Please note that in addition to making gifts using your gift tax exemption and annual exclusion amounts, there is an unlimited gift tax exclusion for amounts paid on behalf of an individual directly to medical care providers for medical care and to educational institutions for tuition.

You may also wish to leverage gifts of your gift and GST tax exemption amounts by engaging in sales to grantor trusts. Other estate planning techniques, including intra-family loans, grantor retained annuity trusts (“GRATs”) and split-interest charitable trusts, continue to be effective wealth transfer tools as well. In January 2018, the Applicable Federal Rate for use with a sale to a grantor trust or for an intra-family loan with a nine-year term will be 2.17%. The Section 7520 “hurdle rate” for GRATs and certain split-interest trusts will be 2.6%. It is important to note that certain techniques work better in a low interest-rate environment, so it may be advantageous to act in the near future before interest rates rise further.

If you have any questions or would like to discuss your particular situation in further detail, please contact the following attorneys or the attorney with whom you regularly work.

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