

Tax Cuts and Jobs Act: Law, Explanation & Analysis

Act: Estate, Gift, and GST Tax Exclusions Increased

Re: 2017 Tax Cuts Act: Estate, Gift, and GST Tax Exclusions Increased

The Tax Cuts and Jobs Act doubles the basic exclusion amount for federal estate and gift taxes and the exemption amount for the generation-skipping transfer (GST) tax. For the estates of decedents dying and gifts made after 2017 and before 2026, the amount increases from \$5 million to \$10 million, before adjustment for inflation.

Estate and gift tax exclusion doubled

For the estates of decedents dying and gifts made after 2017 and before 2026, the basic exclusion amount for purposes of federal estate and gift taxes is doubled from \$5 million to \$10 million, subject to adjustment for inflation. Accordingly, the estate and gift tax basic exclusion amount applicable to the estates of decedents dying and gifts made in 2018 is estimated to be more than \$11 million, as adjusted for inflation. For a married couple using portability, the maximum applicable exclusion amount would be doubled again, estimated to be more than \$22 million.

Because the doubling of the estate and gift tax exclusion amount expires for decedents dying and gifts made after December 31, 2025, the next several years present a tremendous opportunity for wealthy individuals and married couples to make large gifts, including those that leverage the amount of the available exclusion, such as those to grantor retained annuity trusts (GRATs).

According to the IRS Statistics of Income tables presenting data on estate tax returns for tax year 2016, a total of 5,219 taxable returns were filed as compared to 7,192 nontaxable returns. Of the taxable returns, just over 2,400 fell within the \$5 to \$10 million gross estate range, with almost 1,300 in the \$10 to \$20 million range. Only 300 returns were filed with gross estates in excess of \$50 million.



These statistics primarily reflect data from the estates of decedents who died in 2015, when the basic exclusion amount was \$5.43 million, but also include some returns for decedents who died in years prior to 2015, as well as a small number of estates with respect to deaths that occurred in 2016. The large increase in the basic exclusion amount after 2017 will no doubt lead to further decreases in the number of taxable estates.

GST tax exemption amount

Because the exemption from the GST tax is computed by reference to the basic exclusion amount used for estate and gift tax purposes, the GST exemption amount for GSTs occurring in 2018 is also estimated to be more than \$11 million. Portability does not apply for purposes of the GST tax.

Corresponding adjustments with respect to prior gifts. In addition to the increase in the basic exclusion amount, the Tax Cuts and Jobs Act modifies the computation of gift tax payable and estate tax payable in cases where gifts have been made in prior years. With respect to the computation of gift tax payable, the tax rates in effect at the time of the decedent's death are used rather than the rates that were in effect at the time the gifts were made.

Inflation adjustments going forward. A separate amendment of the Tax Cuts and Jobs Act requires that future inflation adjustments mandated throughout the Internal Revenue Code be made using the "Chained" Consumer Price Index for All Urban Consumers (C-CPI-U) rather than the CPI adjustment used under current law. This change, effective for tax years beginning after December 31, 2017, will generally serve to slow down inflation adjustments to provisions throughout the Code, including the estate and gift tax exclusion amounts.