

2017 Tax Cuts and Jobs Act (Changes for Estate, GST & Gift Taxes)

The 2017 Tax Cuts and Jobs Act was signed into law on December 22, 2017. Under this Act, wide-ranging changes were made to the Internal Revenue Code. While most of you are aware of the substantial changes that were made to the individual and corporate income tax rates, there were also significant changes made in the estate, GST and gift tax areas. As was the case with the estate tax changes that were part of the 2001 Tax Act, these changes are not permanent and will expire (sunset) on January 1, 2026, and revert back to the law as existing before December 22, 2017.

The changes include an increase in the federal credit exemption for federal estate, gift and generation skipping transfers. For 2018, the exemption will be increased to \$11,180,000 per individual (\$22,360,000 per couple) with a tax rate of 40% for transfers in excess of the exemption. The credit exemption will continue to be indexed for inflation.

- ▲ Note: For 2018, the annual gift tax exclusion has been increased to \$15,000 per donee (\$30,000 if donor is married).

There are no changes to the current rules regarding step-up-in-cost basis for assets passing to beneficiaries upon an individual's death. However, the retention of the step-up-in-cost basis combined with the increase in the federal credit exemption will not only open up new planning opportunities but also require existing estate plans to be reviewed. Revisions may be necessary to ensure assets are transferred in the most tax effective manner, while also meeting the deceased's distribution objectives.

- ▲ Assuming a standard will and trust format, assets in the deceased's name would first be used to fund the Credit Shelter (or Bypass) Trust. Depending on the size of the estate and titling of assets, this trust could be funded with most or all of the probate estate assets, leaving no or minimal assets to fund the Marital Trust.
 - △ If the surviving spouse is the sole beneficiary of the Credit Shelter Trust, his or her financial security would be intact. However, in cases where the children or others are beneficiaries of this trust, there may not be sufficient assets passing to the spouse or Marital Trust to ensure the spouse's financial security.
 - △ Additionally, for Pennsylvania residents, the wording and beneficiaries of the Credit Shelter Trust may affect the amount of Pennsylvania Inheritance Tax payable. E.g. If children and descendants are part of the beneficiary group of the Credit Shelter Trust, PA inheritance tax of 4.5% will be payable at the creation and funding of the trust.
- ▲ As stated above, upon an individual's death, the assets included in his or her taxable estate receive a step-up-in-cost basis to the then current value (as listed for estate tax purposes). Assets included in a surviving spouse's taxable estate, including assets in a Marital Trust, will receive a second step-up-in-cost basis upon the spouse's subsequent death. Assets held in the Credit Shelter Trust will generally not receive this step-up-in-basis at the spouse's death. Existing estate plans should be reviewed to determine if it would be desirable to have assets held in a Marital Trust (rather than a Credit Shelter Trust), resulting in a second step-up-in basis for those assets.
- ▲ The use of a general power of appointment in a trust may also be utilized as part of a plan that incorporates "basis planning" especially with regard to assets passing to the next generations. Basis planning should also be a consideration when determining which assets should be distributed from or held in a trust.

If you have any questions regarding the above, please give us a call. As always, it is important to consult with a financial and legal advisor before taking any specific action.

This publication is designed to present information on business, tax and estate planning matters in general terms and is not intended to be used as a basis for specific action without obtaining professional advice.