

2017 TAX CUTS & JOBS ACT

Estate and Gift Tax Provisions

Exemption Amount Doubled: A simple but powerful change was made to the Federal Estate and Gift Tax: Starting in 2018, the amount that an individual can transfer free from estate tax (the "exclusion amount") increased from a base of \$5 million to a base of \$10 million, each increased for inflation starting in 2012. Although the exact figure for 2018 has not been set yet, the estimate is \$11.18 million. No other substantial change was made. Everyone simply has twice the exemption that they had previously.

Portability Remains: "Portability" is still available for married couples to allow them effectively to "share" their exclusion amounts and transfer a total of approximately \$22.36 million before their estates will pay federal estate or gift tax. This doubling of the base exclusion, however, expires after 2025, and the 2026 exclusion is scheduled to return to the \$5 million base, again indexed from 2012.

Step-Up Remains: The step-up in basis still applies so that the beneficiary's basis in the property increases from the decedent's basis up to the fair market value of the property as of the decedent's date of death.

Carry-over Basis for Gifts: Carry-over basis still applies to gifts so that the donee generally receives the donor's basis, but the gift tax exemption remains unified with the federal estate tax exemption and an individual can gift about \$11 million before being subject to gift tax. Use of the gift tax exemption reduces the estate tax exemption allowed at death.

Gift Tax Annual Exclusion. Although not effected by the TCJA, the annual exclusion from gift tax amount increased for 2018 to \$15,000 per donor, per donee, per year.

Generation Skipping Transfer Tax. The generation-skipping transfer tax, a tax intended to prevent the avoidance of estate and gift taxes by transferring assets directly to grandchildren or even younger generations, is tied to the same exclusion amounts, and generation-skipping transfers will enjoy the same larger exclusions until 2026. (Portability still does not apply to GST taxes.)

Regulations Needed: Many of the details of how the temporary change will be implemented are left to regulations to be promulgated by the IRS.