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Tax Notes

Post the TCJA: Lifetime Gifting

By Alan S. Kufeld, CPA, Partner and Christine G. Pronek, CPA, Partner

As part of the extensive changes made by the Tax Cuts and Jobs Act (TCJA), often overlooked are the increased lifetime gift, estate and generation-skipping transfer (GST) tax exemptions. Let's consider what the TCJA did with respect to lifetime gifting.

The TCJA effectively doubles the 2017 lifetime exemption amounts. The increased exemptions have also been indexed for inflation. For 2019, the federal exemptions are $11,400,000 per individual and $22,800,000 for a married couple. Although the exemption amounts have significantly increased, the top marginal estate and gift tax rate, as well as the flat GST rate, remains unchanged at 40% for 2019.

Keep in mind that the increase in the gift, estate and generation-skipping transfer tax lifetime exemption amounts under the TCJA are ***not*** permanent. Without further action by Congress, the lifetime exemption amounts are set to revert to their 2017 levels of $5,490,000 ($10,980,000 for a married couple) adjusted for inflation beginning on January 1, 2026. Succinctly put, this creates a window of opportunity for planning because increased exemptions **must be used before 2026** or they could be lost.

No "Clawback"

In November 2018, the Treasury Department issued Proposed Regulation 20.2010-1(c) addressing potential "clawback" concerns clarifying that making lifetime gifts using the increased exemptions under the TCJA will not cause adverse estate tax consequences if you die after 2025 when the exemptions return to pre-TCJA levels.

Benefits of Lifetime Gifting

Some advantages of lifetime gifting are:

- The increased exemption amounts clearly favor those taxpayers with very large estates as these individuals may be more comfortable with significant lifetime gifts. Lifetime gifting ─ which are taxable gifts in excess of annual exclusion amounts ─ can reduce the family's future estate tax liability by removing the asset and its future appreciation from the taxable estate. This could be significant.
- Many states have their own estate or inheritance tax but do not have a gift tax. This provides further incentives for making taxable lifetime gifts.
- Lifetime gifting also allows the donor the opportunity to enjoy watching the recipient use the gifted funds in the course of their lifetime.

To Split or Not to Split. That is the Question

If you are married and you are contemplating making gifts in excess of $5,490,000 (the amount per individual the exemptions are expected to revert to in 2026) ─ but less than the current lifetime exemption amounts ($11,400,000 per individual) ─ you should consider ***not*** splitting gifts.

By way of example, if you and your spouse were to make a $10,980,000 gift to your child and elected to split the gift (whereby each spouse is deemed to have made a $5,490,000 gift), then each spouse would have used $5,490,000 of their current gift tax exemption. Not a bad idea, but after 2025, when the gift tax exemption returns to $5,490,000, neither spouse will have any gift tax exemption remaining. However, if you were to make the entire $10,980,000 gift (the gift is not split), then after 2025, your spouse's $5,490,000 gift tax exemption will still be available to cover future gifts.

As always, make sure you're gifting and use of exemption is in line with your overall estate plan.

Potential Income Tax Consequences

When gifting appreciated assets, it is important to consider potential income tax implications as well. Property transferred at death receives a "step-up" in basis and property transferred during one's lifetime retains the donor's tax basis, so it is important to weigh the estate tax savings against the potential income tax costs.

Contact Us

In light of these significant estate, gift and GST tax changes, you may want to update your estate plan and gifting strategy to ensure that you take full advantage of the increased lifetime exemptions and annual exclusion amounts. There is only a limited window of opportunity, so you should act swiftly.

If you have questions regarding how these rules will apply to your tax planning, contact either of the individuals listed below or another member of your client service team at PKF O'Connor Davies.

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