

## Trusts and Estates Group Client Alert: Tax Reform and Valuation Discounts

### EMERGING TAX REFORM LEGISLATION

In recent days, House and Senate Republicans have released proposed bills that would make changes to the gift tax, estate tax, and generation-skipping transfer (“GST”) tax. First, both the House bill and the Senate bill propose to increase the gift, estate, and GST tax exemption. Under current law, the gift, estate, and GST tax exemption is \$5 million per person, indexed for inflation for years after 2011. The exemption is scheduled to increase from \$5.49 million per person this year to \$5.6 million on January 1, 2018. Under both the House bill and the Senate bill, the exemption would increase to \$10 million per person, indexed for inflation for years after 2011 (*i.e.*, \$11.2 million for 2018, or \$22.4 million for 2018 for a married couple). Under the House bill, effective January 1, 2025, the estate and GST taxes would be repealed and the gift tax would be retained, but the gift tax rate would be reduced from 40% to 35%. The Senate bill retains the estate, gift, and GST taxes at the current 40% tax rate. Both bills would preserve the step-up in income tax basis for assets owned at death.

The House is expected to vote on its bill in mid-November. The Senate is expected to vote on its bill in late November or early December. If both chambers pass their respective bills, a House-Senate conference committee will have to work through any differences. The resulting compromise will have to be passed by both chambers before it can reach President Trump’s desk. Legislation could be enacted before the end of the year.

### IRS RESCINDS PROPOSED VALUATION REGULATIONS

Last year, the IRS published proposed regulations under Section 2704 of the Internal Revenue Code that would have disallowed valuation discounts for interests in family-controlled entities, such as corporations, partnerships, and limited liability companies. Last month, the IRS announced it will withdraw the proposed regulations, explaining that they took an “unworkable” approach to the problem of artificial valuation discounts. It is unclear whether the IRS will replace the withdrawn proposed regulations.

## IRS INFLATION-ADJUSTED AMOUNTS FOR 2018

The IRS has released its annual inflation-indexed amounts for 2018:

1. The annual gift tax exclusion amount (*i.e.*, the amount that can be given annually gift-tax-free to an unlimited number of donees) will increase to \$15,000 per donee (or \$30,000 for a married couple that elects to split gifts for the year), up from \$14,000 per donee in 2017.
2. The annual gift tax exclusion amount for gifts to a spouse who is not a United States citizen will increase to \$152,000, up from \$149,000.
3. The gift, estate, and GST tax exemption amount (*i.e.*, the amount of taxable transfers that can be given transfer-tax-free in the aggregate during lifetime or at death) will increase to \$5.6 million per person (or \$11.2 million for a married couple), up from \$5.49 million.
4. Recipients of gifts from foreign persons who are corporations or partnerships must report such gifts if the aggregate value of the gifts received in 2018 exceeds \$16,111. The threshold for reporting gifts from a foreign person who is an individual will remain at \$100,000.

Please feel free to contact us if you have any questions regarding how these potential changes affect your current estate planning documents or create possible planning opportunities for you.

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Please feel free to discuss any aspects of this Client Alert with your regular Milbank contacts or any of the members of our Trusts and Estates Group.

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