



# Taxation of Estates and Estates after the Tax Cuts and Jobs Act

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## 2016 Goals of the GOP\*

- Ensure that death is not a taxable event
  - Eliminate estate tax
  - Eliminate generation skipping transfer tax

# Tax Cuts and Jobs Act

## income tax rate changes for trusts & estates

Trust & estate income tax rates:

IRC §1(e) as amended:

“(E) ESTATES AND TRUSTS.—The following table shall be applied in lieu of the table contained in subsection (e):

**“If taxable income is: The tax is:**

- Not over \$2,550 ..... 10% of taxable income.
- Over \$2,550 but not over \$9,150 ..... \$255, plus 24% of the excess over \$2,550.
- Over \$9,150 but not over \$12,500 ..... \$1,839, plus 35% of the excess over \$9,150.
- Over \$12,500 ..... \$3,011.50, plus 37% of the excess over \$12,500.

## Tax Cuts and Jobs Act

### income tax rate changes for trusts & estates

Prior law:

If taxable income is:

- Not over \$1,500 ..... 15% of taxable income.
- Over \$1,500 ..... \$225, plus 28% of the  
but not over \$3,500 ..... excess over \$1,500.
- Over \$3,500 ..... \$785, plus 31% of the  
but not over \$5,500 ..... excess over \$3,500.
- Over \$5,500 ..... \$1,405, plus 36% of the  
but not over \$7,500. .... excess over \$5,500.
- Over \$7,500 ..... \$2,125, plus 39.6% of the  
..... excess over \$7,500.

The tax is:

## **Tax Cuts and Jobs Act**

### **income tax rate changes for trusts & estates**

- Rate changes effective only after December 31, 2017 and before January 1, 2026
- Apply without adjustment in tax year 2018
- Inflation adjustment of IRC §1(f) applies to subsequent years

# **Tax Cuts and Jobs Act change in exclusion amount**

- Section 11061(b) amended IRC §2001(g) to direct the Secretary to develop regulations to adjust for differences in the exclusion amount at the time of lifetime gifts and the exclusion amount at the date of death
- Amendments are applicable only to deaths after December 31, 2017 and prior to January 1, 2026
- IRC §2101, Estates of nonresidents not citizens, not changed

# Tax Cuts and Jobs Act change in exclusion amount

- Section 11061(a) amended IRC §2010(a)(3) to substitute \$10,000,000 for \$5,000,000
- 2018 pre-Act inflation adjusted exclusion amount - \$5.6 million
- 2018 post-Act inflation adjusted exclusion amount - \$11.2 million
- For deaths after December 31, 2025, return to \$5 million, adjusted for inflation
- GST exemption, not mentioned, but based upon basic exclusion amount
- Portability unchanged
  - Available for estate & gift taxes; not GST

# Planning Pointers

- Increased GST exemption an opportunity to make a late allocation of the GST exemption to reduce inclusion ratios of irrevocable trusts to zero
- Make additional lifetime gifts
  - Alternatives to lifetime gifts that use exclusion amount but retain control of property?
    - May depend, in part, on state trust law
    - High risk – few or no precedents



# Planning Pointers

- Congress likely to change law prior to its expiration
- Use portability to claim additional exclusion amount
  - Will additional amounts be available at expiration of the Act?

# Planning Pointers

- Assets to which exclusion amount will be allocated
  - Should be addressed & resolved promptly (especially since there is now a window to protect more assets)
- Avoid letting increase in exclusion amount lull families into failing to address non-tax issues:
  - Retirement & business transition
  - Medical & extended care

# Planning Pointers

- State estate and/or inheritance taxes
- Probate taxes
- Transfer taxes (mostly an issue for life time gifts)