
Gift, Estate and GST Exclusion Amounts for 2021

As 2021 begins, for now (although this may change, as described below) the current gift and estate tax exclusions, GST exemption amount, tax rates, and annual gift tax exclusion are as follows:

Federal

Gift and Estate Tax Exclusions

The gift and estate tax exclusion amount (also called the “applicable exclusion amount”) increased slightly from \$11.58 million (in 2020) to \$11.7 million (in 2021) per individual (or \$23.4 million for a married couple).¹ Estates of decedents survived by a spouse may still elect to pass any of the decedent’s unused applicable exclusion amount to the surviving spouse by an election made on a timely filed estate tax return for the decedent with a surviving spouse (also known as “portability”).

GST Exemption

The generation-skipping transfer (GST) tax exemption also increased to \$11.7 million per individual (or \$23.4 million for a married couple). The GST exemption is not portable between spouses.

Tax Rate

The maximum gift, estate and GST tax rates (i.e., applicable after use of the applicable exclusion/GST exemption amount) are 40%.

Annual Gift Tax Exclusions

The annual exclusion for lifetime gifts remains unchanged, which is \$15,000 per recipient (or \$30,000 for a married couple).² This means that an individual donor can gift up to \$15,000 to any individual (or number of individuals) he or she desires with no federal gift tax consequences.

The annual gift tax exclusion to non-U.S. citizen spouses has increased from \$157,000 (in 2020) to \$159,000 (in 2021).³

Sunset

As provided under the Tax Cuts and Jobs Act of 2017, the current applicable exclusion amount and GST exemption, described above, are scheduled to sunset on December 31, 2025, which means these amounts would be reduced to their 2011 with inflationary adjustments. This means that the estate and gift tax exemption would be reduced back to \$5 million per individual (or \$10 million for a married couple), as adjusted for inflation from 2011.⁴ We estimate that the amount in 2026 will be roughly \$6 million.

See our note on “*Biden Changes*” below.

¹ Rev. Proc. 2020-45, Section 3.41. The applicable exclusion amount may be increased by an inflation factor each year. Internal Revenue Code Section 2010(c)(2)(B).

² Rev. Proc. 2020-45, Section 3.43(1). The annual exclusion may be increased by an inflation factor each year. Internal Revenue Code Section 2503(b)(2). In 2021, the factor did not cause an increase. We anticipate an increase in 2022 to \$16,000.

³ Rev. Proc. 2020-45, Sections 3.43(2).

⁴ Tax Cuts and Jobs Act of 2017, Pub. L. No. 115-97, § 11061, 131 Stat. 2091.

District of Columbia

For individuals dying on or after January 1, 2021, the exemption is now \$4 million.⁵

This is roughly \$1.75 million lower than last year, which translates to a tax increase of roughly \$203,000 as compared to similar-sized estates of decedents who died in 2020. For example, if a DC resident dies on January 1, 2021 with an estate of \$6 million, the estate will pay DC estate tax of \$232,000,⁶ which is roughly \$203,000 more than the same estate would have paid had the decedent died on December 31, 2020.

The maximum estate tax rate for the District of Columbia remains at 16%.⁷

The District of Columbia does not recognize portability.

The District of Columbia does not have a gift tax.

Maryland Estate Tax

Maryland's estate tax exemption amount is the same as last year's amount, which is \$5 million for an individual dying on or after January 1, 2019 (or \$10 million for a married couple).⁸ The current maximum Maryland estate tax rate is unchanged at 16%.⁹

Unlike the District of Columbia, Maryland recognizes portability; therefore, under certain circumstances, the \$5 million exemption amount may be increased by any deceased spousal unused exclusion amount.¹⁰

In addition to the estate tax, Maryland also imposes an inheritance tax at a rate of 10% of the clear value of property that passes from a decedent to certain beneficiaries.¹¹

Maryland does not have a gift tax.

No Estate Tax in Virginia and Florida

Neither Virginia nor Florida impose a separate gift or estate tax.¹²

Future Presentations

At FKL, we are committed to being innovative and creative leaders in the trusts & estates practice. Here are some of our upcoming presentations:

Richard Franklin will be presenting:

Well-Being Trusts – The Future of Imbuing Trusts with Positivity, Meaning and Purpose to the Chicago Estate Planning Council – January 27, 2021;
Self-Determination Activates the Well-Being Benefit of Philanthropy in Trusts & Estates at the D.C. Bar Communities program “Planning with Philanthropy - How to Discuss Charitable Giving with Your Clients,” sponsored by the Estates, Trusts and Probate Law Community – January 28, 2021

George Karibjanian will be presenting:

The “Baker’s Dozen” – 13 Things That You May Not Know About Preparing a Federal Estate Tax Return at the Collier County (Fla.) Bar Association’s 2021 Virtual Estate Planning Symposium – January 22, 2021
More Than Just Creditor Protection – Practical Uses of Domestic Asset Protection Trusts in Estate Planning, an American Law Institute – American College of Trust and Estate Council Webinar – March 25, 2021

⁵ D.C. Code § 47-3701(14)(D). The \$4 million tax exemption increases annually, beginning with the year commencing on January 1, 2022, by the cost-of-living adjustment. DC’s Council lowered the exemption amount as a way to generate more revenue to replace the substantial loss of revenue because of the global coronavirus pandemic.

⁶ As noted above, under current Federal law, this \$6 million estate would have no Federal estate tax liability (assuming the decedent made lifetime gifts of \$5.7 million or less).

⁷ D.C. Code § 47-3702.

⁸ Md. Code Ann., Tax-Gen. § 7-309(b)(3). Unlike the District of Columbia, Maryland’s estate tax exemption is not indexed for inflation.

⁹ Md. Code Ann., Tax-Gen. § 7-304.

¹⁰ Md. Code Ann., Tax-Gen. § 7-309(b)(3).

¹¹ Md. Code Ann., Tax-Gen. §§ 7-201 – 7-204.

¹² For years, Virginia and Florida both assesses a separate state estate tax based on the amount of the calculated federal credit for state death taxes paid. Beginning in 2005, the federal credit was eliminated and, in its place, a deduction for federal estate tax purposes was granted for the payment of any state death taxes. Because Florida’s statute was specifically tied to the “credit” for state death taxes paid, the elimination of the federal credit caused the elimination of Florida’s state estate tax. Likewise, Virginia repealed its state estate tax as of July 1, 2007.

Biden Changes

During his campaign, President Biden proposed significant changes to the gift, estate and GST tax system. At this time, it is not known which of his proposals will eventually be introduced as legislation, and whether any such changes would be retroactive to January 1, 2021.¹³ Once any draft legislation takes shape, we will update you.

* * * * *

If you have any questions, please contact one of our lawyers.

RICHARD S. FRANKLIN [bio](#)
rfranklin@fkl-law.com

GEORGE D. KARIBJANIAN [bio](#)
gkaribjanian@fkl-law.com

LESTER B. LAW [bio](#)
lblaw@fkl-law.com

NICHOLEEN DePERSIS [bio](#)
ndepersis@fkl-law.com

JUNE C. FAN [bio](#)
jfan@fkl-law.com

DISCLAIMER: This material is not intended to constitute a complete analysis of all tax or legal considerations. This material is not intended to provide financial, tax, legal, accounting, or other professional advice. Consult with your professional adviser to obtain counsel based on your individual circumstances.

¹³ For a summary of possible changes, see Kamin, Colton, Carter, [A Guide to Potential Tax Law Changes Under Biden](#), (Wealth Management, Jan. 14, 2021).