
Transfer Tax Changes for 2022

BBB Act

The initial version of the Build Back Better Act (the “BBB Act”) proposed changes that could have significantly impacted estate planning, including a one-half reduction of the gift and estate exclusion and GST tax exemption, and the complete overhaul of the income and estate taxation of certain irrevocable trusts. The proposed changes were so game-changing that we issued a client alert advising of them.¹

However, most of the concerning changes were eliminated from the BBB Act as eventually passed by the House of Representatives. The BBB Act has yet to formally be introduced into the Senate and any potential vote appears unlikely at this time.²

Even though there is no new estate tax legislation, there are increases to current estate, gift and generation skipping-transfer (GST) tax exemptions and exclusions, which we summarize below.³

Inflation adjustments as of January 1, 2022:

The 2022 gift and estate tax exclusions, GST exemption amount, tax rates and annual gift tax exclusions are as follows:

Federal

Gift and Estate Tax Exclusions

For 2022, the federal gift and estate tax exclusion amount increased by \$360,000 to \$12,060,000 per individual (or \$24,120,000 for a married couple).⁴ This exemption is portable between spouses.

It is important to note that, while no legislation was passed to reduce the federal gift and estate tax exclusion for 2022, the federal gift and estate tax exclusion is set to revert back to the pre-2018 amount of \$5,000,000 (indexed for inflation) in 2026, which is anticipated to be approximately \$6,600,000.⁵

GST Exemption

The GST tax exemption is also increased to \$12,060,000 per individual (or \$24,120,000 for a married couple).

The GST exemption remains not portable between spouses.

Tax Rate

The maximum gift, estate, and GST tax rate (applicable after use of the gift and estate tax exclusion or GST exemption amount) remains at 40%.

¹ See [“Proposed Changes to Income and Transfer Taxes – A Brief Summary of the Estate Planning Changes in the New \\$3.5 Trillion Infrastructure Proposal](#) (September 16, 2021).

² See Stein, [Manchin’s \\$1.8 trillion spending offer appears no longer to be on the table](#), Wash. Post (Jan. 8, 2022).

³ Under current legislation, the estate, gift and GST tax exclusions and exemptions are slated to increase based on adjustment to the cost-of-living index. These changes take effect every year on January 1.

⁴ Rev. Proc. 2021-45, Section 3.41.

⁵ Tax Cuts and Jobs Act of 2017, Pub. L. No. 115-97, § 11061, 131 Stat. 2091, doubled the basic exclusion amount from \$5 million to \$10 million and is subject to sunset in 2026. The \$6.6 million estimate is determined by using the 2017 exemption amount of \$5,490,000 adjusted for inflation using the average inflation rate for the past few years.

Annual Gift Tax Exclusion Amounts

Certain annual exclusions for gifts are also subject to inflationary adjustments and, for the first time since 2018, the annual gift tax exclusion increased by \$1,000 to \$16,000 per donee (or \$32,000 for a married couple).⁶ This means that, starting in 2022, an individual donor can give up to \$16,000 to an unlimited number of individuals with no federal gift tax consequences.

Additionally, the annual exclusion for gifts to a non-U.S. citizen spouse increased by \$5,000 to \$164,000.⁷

District of Columbia

The Estate Tax Adjustment Amendment Act of 2020 reduced the District of Columbia (“D.C.”) estate tax exemption from \$5,762,400 in 2020 to \$4,000,000 in 2021. The \$4,000,000 estate tax exemption will remain in effect for 2022 as adjusted by a cost-of-living adjustment.⁸ The final 2022 adjusted estate tax exemption amount has not yet been released by D.C. Council.

The maximum D.C. estate tax rate remains at 16%,⁹ and D.C. continues to not recognize portability, does not impose a gift tax (i.e., on gifts made during the donor’s lifetime), and does not impose a GST tax.

Maryland

The Maryland estate tax exemption will remain at \$5,000,000 for an individual (or \$10,000,000 for a married couple) with no adjustment for inflation.¹⁰

Maryland also does not impose a gift tax (i.e., on gifts made during the donor’s lifetime), recognize portability or impose a GST tax. Maryland does, however, impose an inheritance tax at the rate of 10% on certain transfers initiated during the decedent’s lifetime and/or at death that pass from the decedent to specific beneficiaries.¹¹

No Estate, Gift or GST Tax in Virginia or Florida

Neither Virginia nor Florida imposes a separate gift, estate or GST tax. In these states, only the Federal wealth transfer taxes apply.

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If you have any questions about the 2022 estate, gift and GST tax exemptions and exclusions, please contact one of our lawyers.

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⁶ Rev. Proc. 2021-45, Section 3.43(1).

⁷ Rev. Proc. 2021-45, Section 3.43(2).

⁸ 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.

⁹ D.C. Code § 47-3702.

¹⁰ Md. Code Ann., Tax-Gen. § 7-309(b)(3). Maryland recognizes portability; therefore, under certain circumstances the surviving spouse’s estate tax exemption may be increased by the deceased spouse’s unused estate tax exemption.

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