
Transfer Tax Changes for 2023

Federal inflation adjustments as of January 1, 2023

Since 2011, the federal gift and estate tax exclusion amount (the “Exclusion Amount”) is subject to an annual inflationary increase. For 2023, the current economic inflationary spike is causing a significant increase in the Exclusion Amount, as well as other federal thresholds subject to annual inflationary adjustment.

Gift, Estate and GST Tax Exclusions/Exemption

For 2023, the inflation-adjusted Exclusion Amount increases by \$860,000 to \$12,920,000 per individual (or \$25,840,000 for a married couple).¹ This means that in 2023, a married couple who have already fully utilized their respective Exclusion Amounts will be able to give an additional \$1,720,000 in taxable gifts without triggering gift taxes. This is an increase of more than 7% to the 2022 federal Exclusion Amount of \$12,060,000.

Two points are worth noting: first, upon the death of a spouse, the unused Exclusion Amount is portable to the surviving spouse, and, second, as of January 1, 2026, the federal Exclusion Amount is set to revert to the pre-2018 amount of \$5,000,000 (indexed for inflation, which, in 2026, is anticipated to be approximately \$7,000,000).²

Annual Gift Tax Exclusion Amounts

The annual per donee gift tax exclusion (the “Annual Exclusion”) increases by \$1,000 to \$17,000 (or \$34,000 for a married couple).³ This means that, starting in 2023, an individual donor can give up to \$17,000 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 increases by \$11,000 to \$175,000.⁴

GST Exemption

The generation-skipping transfer tax exemption, which tracks the Exclusion Amount, but is a separate exemption amount, also increases by \$860,000 for 2023 to \$12,920,000 per individual (or \$25,840,000 for a married couple).

Interest Rates

The November 2022 Applicable Federal Rates (for annual compounding) will be as follows: short-term 4.10%, mid-term 3.97%, and long-term 3.92%.⁵ The so-called Section 7520 rate,⁶ which is the IRS interest rate used for many estate planning purposes, will be 4.8%. Just for context, the last time the Section 7520 was at 4.0% or higher was January 2008, more than 12 years ago. A year ago, in October 2021, the Section 7520 rate was 1.0%.⁷

¹ Rev. Proc. 22-38, § 3.41 (released Oct. 18, 2022).

² 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 on December 31, 2025.

³ Rev. Proc. 22-38, § 3.43(1).

⁴ Rev. Proc. 22-38, § 3.43(2).

⁵ Rev. Rul. 2022-20.

⁶ The Section 7520 rate is 120% of the mid-term AFR (rounded up to the nearest tenth of one percent).

⁷ Rev. Rul. 2021-18.

The prime rate is 6.25%.⁸ By comparison, in September 2021, the prime rate was 3.25%.

Increasing interest rates are both positive and negative for estate planning. On the positive side:

- As noted above, the amount each individual can give in 2023 is increasing by \$860,000, which is the largest ever indexing increase to the gift and estate tax exclusion/GST exemption
- Qualified Personal Residence Trusts offer greater leverage because the settlor's retained term of rent-free use will be more valuable, which decreases the value of the remainder interest that is subject to the gift tax
- Charitable Remainder Trusts are better positioned to pass the qualifying tests, which will produce a charitable income tax deduction and enable capital gains tax deferral

On the negative side:

- Inter-family and inter-trust borrowing costs more
- Grantor Retained Annuity Trusts require a higher payout to the settlor to reach a "zero-gift amount," which puts more pressure on obtaining higher investment returns to achieve a positive wealth transfer
- Charitable Lead Trusts require a higher payout to charity to "zero out" the remainder interest gift to family members, and this also puts more pressure on obtaining higher investment returns to achieve a positive wealth transfer

* * * * *

⁸ See [Historical Prime Rate](#), JP Morgan. The prime rate is typically 3% more than the Federal funds rate. For an explanation of the relationship of these rates see Kurk, [The Federal Funds, Prime, and LIBOR Rates](#), Investopedia (June 22, 2022).

FKL News and Thought Leadership:

We welcome attorney Janet B. Law to our team! Janet joined us in May, bringing with her almost 30 years of estate and fiduciary administration experience (previously at Bank of America / U.S. Trust Company). Janet is a member of the D.C., California, and New York Bars. She is originally from New York and enjoys spending time with her children and grandchild, and also playing pickle ball in her spare time.

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* at the Lee County Estate Planning Council’s October 2022 Meeting on October 20, 2022 in Ft. Myers, Florida. In addition, Richard and his wife, Claudia, also have written a chapter entitled “*A Framework for Family Wealth and Well-Being*” in the newly published book [WEALTH OF WISDOM](#) (Sept. 2022).

Lester Law, as of this summer, has now completed his fourteenth year as an instructor at the Florida Banker’s Wealth Management and Trust School, presenting on income, gift, estate and GST taxes and estate planning. He also recently presented *Planning with IRAs* at the 63rd Annual Florida Bankers Annual Meeting and Wealth Management Conference on September 23, 2022 in Ft. Lauderdale, Florida, and *Planning for IRAs for 99% of Your Clients* at the 70th Annual Montana Tax Institute on October 15, 2022 in Missoula, Montana. Lester is also on his sixth year of teaching *Income Tax for Estate Planning* as an Adjunct Professor at the Heckerling Graduate Program in Estate Planning at the University of Miami School of Law.

George Karibjanian recently presented *The “Baker’s Dozen” – 13 Things That You May Not Know About Preparing a Federal Estate Tax Return* at the ACTEC Mid-Atlantic Fellows Institute on September 16, 2022 in Washington, D.C., and “*Lights...Camera...ACTION!*” *A “Front-to-Back” and “Back-to-Front” Overview of Trust Directors and Directed Trusts Under Florida Law*” at the Florida Legal Education Association’s “2022 Probate Team” seminar on October 15, 2022 in Orlando, Florida. George will also be presenting “*Helping Ira Plan His IRA from the IRA*” – *Testamentary Planning with Individual Retirement Accounts* at the California Lawyers Association Taxation Section’s 2022 Annual Meeting of the Tax Bar and Tax Policy Conference on November 4, 2022 in San Diego, California, and *Florida’s “Back End SLAT Statute” – An Analysis of Fla. Stat. §736.0505(3)(A)3* at the Central Florida Estate Planning Council’s November 2022 Meeting on November 10, 2022 in Orlando, Florida.

If you have any questions about the 2023 estate and gift tax exclusions, or the impact of rising interests rates on your estate plan, 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

JANET B. LAW [bio](#)
jlaw@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.