



US Individual Income Tax and Transfer Taxes After US Tax Reform

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US Estate, Gift, GST Tax Changes

US Estate, Gift and GST Tax Changes

- US citizens and US domiciliaries continue to be subject to: (i) a 40% US estate tax on their worldwide property owned at the time of their deaths, (ii) a 40% gift tax on worldwide lifetime gifts, and (iii) a 40% generation skipping tax on gifts or bequests that skip a generation
- Assets left to surviving spouse continue to be exempt from estate and gift tax, unless the spouse is not a US citizen
- Increased estate, gift and GST tax exclusion to \$11.18 million for decedents in 2018 and \$22.36 million for married couples; easier to utilize both exemptions due to portability
- The increased exclusion sunsets 12/31/2025 and pre-2018 levels apply, with inflation adjustments
- Basis step-up on death to fair market value retained for assets inherited from decedent
- Valuation discount techniques should continue to apply
- Inflation index increases annual exclusion for 2018 up to \$15,000 per donee and \$30,000 split gift with spouse

Estate, Gift and GST Impact on Non-US Persons

- Subject to an applicable double tax treaty, individuals who are neither US citizens nor domiciled in the US at the time of death continue to be subject to a 40% US estate tax on their “U.S.-situs” tangible and intangible property and real estate, and to a 40% US gift tax on US situs tangible property and real estate
- US situs intangible property (shares in corporations, interests in partnerships) owned by non-resident aliens of the US remains exempt from US gift tax (although it is subject to US estate tax)
- The changes in the tax law that impact estate planning for non-resident aliens are those with respect to business entities

Estate Tax Exemption for Non-resident/Non-Citizen

- Remains at a mere \$60,000 (exclusion equivalent of \$13,000 credit)
- Tax law continues to provide that to extent required under any treaty, credit allowed to estate of non-resident/non-citizen shall equal amount which bears the same ratio to the \$11.18 million exemption as the value of the part of the decedent's estate that is situated in the US bears to the value of the decedent's worldwide estate
- Property is not treated as situated in the US if it is exempt from estate tax under a treaty

Estate Tax Exemption Portability

- Effective for estates of those who die after 12/31/2010, “portability” enables surviving spouse to utilize deceased spousal unused exclusion (“DSUE”) amount if elected on deceased spouse’s estate tax return
- Portability avoids use of credit shelter trust and allows basis step up on second death
- Estate of nonresident surviving spouse who is not a US citizen at the time of his or her death may not take into account the DSUE amount of a pre-deceased spouse, except as allowed under applicable treaty obligations of the US
- If a surviving spouse becomes a US citizen after the death of his or her last deceased spouse, the DSUE amount of the surviving spouse’s last deceased spouse is available on the date the surviving spouse becomes a US citizen

Estate Tax Exemption Portability (cont'd.)

- When property passes from decedent for benefit of non-citizen surviving spouse in a qualified domestic trust (“QDOT”) (which is required to secure the unlimited marital deduction for non-citizen spouse), the estate tax that is due when distributions of principal are made from the QDOT or upon spouse’s death is determined by applying the estate tax rates in effect on the predeceased spouse’s death and any available credits of the predeceased spouse, including his or her unused exemption
- Consequently, when a QDOT is created, the DSUE amount of the surviving spouse must be recalculated as distributions are made from the QDOT and on termination of the QDOT (usually when the surviving spouse becomes a US citizen or upon his or her death)
- If surviving spouse becomes a US citizen, the QDOT is no longer subject to estate tax and the DSUE amount is not adjusted any longer

State Estate Taxes

States with an Estate Tax

- Connecticut, Delaware, District of Columbia, Hawaii, Illinois, Maine, Maryland, Massachusetts, Minnesota, New York, Oregon, Rhode Island, Vermont, and Washington
- New Jersey eliminated its estate tax for decedents who die on or after January 1, 2018
- Note that state estate tax exemptions may be less than federal exemption, e.g., \$5.25M in New York; \$2M in Connecticut

States with an Inheritance Tax

- Iowa, Kentucky, Maryland, Nebraska, New Jersey, Pennsylvania
- Maryland is now the only state with both an Estate and Inheritance Tax

States with a Gift Tax

- Connecticut

Continued Importance of Estate Tax Reduction Planning

Estate tax reduction planning as important as ever, particularly due to 2026 sunset provisions for increased exemption

Some techniques to consider that leverage the new \$11.18 million exemption:

- Lifetime and annual gifts
- Multigenerational (dynasty) trusts
- Sales of appreciated assets to grantor trusts
- Grantor retained annuity trusts (GRATs) for appreciating assets
- Gifts to spousal trusts (SLATs)
- Purchase of life insurance
- Rely on portability to utilize both spouses' exemptions (\$22.36 million)



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US Individual Income Tax Changes

US Federal Income Tax Rates Compared

	Highest Original Rate <u>Before</u> the Act	Highest Original Rate <u>After</u> the Act	Highest Capital Gain Rate <u>Before</u> the Act	Highest Capital Gain Rate <u>After</u> the Act
Individual	39.6%	37%*	20%	20%
Trust/Estate	39.6%	37%*	20%	20%
Corporation	35%	21%**	35%	21%**

* This rate will expire for taxable years beginning on or after January 1, 2026.

** This rate change is permanent

US Individual Income Tax Changes

Standard Deduction	Doubled - Increased to \$12,000 (Single), \$24,000 (MJ)
Personal Exemption	Suspended
Home Mortgage Interest	Limited to interest paid on first \$750,000 of acquisition debt
Child Tax Credit	Expanded but subject to stricter verification
SALT Deduction	Capped at \$10,000 of state and local taxes
Alimony	Repeal of deduction for instruments executed after 12/31/2018 (Permanent)
Miscellaneous Itemized Deductions	Suspended

Income Tax Planning now as Important as Estate Tax Planning

- Due to increased exemption, some couples will not face any estate tax
- Strengthened due to 2012 “portability” law that permits surviving spouse to utilize unused exemption of deceased spouse, giving surviving spouse \$22.36 million estate tax exemption
- Planning prior to 2012 law required first spouse to die to bequeath assets to children or to a trust to preserve his or her estate tax exemption
- If estate is under \$22.36, preference may be to bequeath all assets to surviving spouse so that all assets receive a basis step up on survivor’s death for income tax purposes
- Allow for flexibility in planning documents so that executor/surviving spouse can decide whether it is better to hold exemption amount in bypass trust or rely on portability in order to achieve basis step-up