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Here Today, Gone in 2026 – Plan to Use Estate, Gift and GST Tax Exemptions in 2025

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In 2018, as part of the “Trump tax cuts,” the federal estate, gift and generation-skipping transfer (GST) tax exemption was increased to \$11,180,000, with annual increases for inflation. Today, the exemption stands at \$13,610,000, and the exemption will increase to \$13,990,000 on January 1, 2025.

The Trump tax cut legislation provided that the increased exemption “sunsets” on December 31, 2025. At that time, the exemption will revert to what it would have been without the increase, which is estimated to be around \$7,000,000, depending on inflation.

For clients with estates large enough to benefit from today's increased exemption, the cost of the exemption reduction will be significant. In 2025, spouses will be able to transfer \$27,980,000 ($\$13,990,000 \times 2$) tax-free during lifetime or at death. If the exemption is reduced to \$7,000,000, for example, the maximum amount that spouses will be able to transfer will be reduced to \$14,000,000 ($\$7,000,000 \times 2$). Since any amount exceeding the exemption would be taxed at a 40 percent rate, the cost of reducing the exemption for spouses will be \$5,592,000 ($(\$27,980,000 - \$14,000,000) \times 40\%$), or for an individual will be \$2,796,000 ($(\$13,990,000 - \$7,000,000) \times 40\%$).

It is possible to “lock-in” the benefit of today's higher exemption level by making a current gift to use some or all of the exemption. There is no loss or “claw-back” of that exemption if the exemption is reduced in a future year. This was discussed in the [December 2018 issue](#) of *Legacy*. Thus, the increased exemption through the end of 2025 is the epitome of a “use it or lose it” situation.

Note that in order to benefit from making a gift during 2025, the amount of the gift must exceed the new exemption level. In other words, if the exemption is reduced to \$7,000,000, and a gift of \$7,000,000 is made, that gift is deemed to use only the \$7,000,000 of exemption that was preserved and no part of the \$6,990,000 ($\$13,990,000 - \$7,000,000$) exemption that was eliminated. On the other hand, a gift of \$10,000,000 would lock in \$3,000,000 (i.e., $\$10,000,000 -$

\$7,000,000) of the current increased exemption.

Many clients may be concerned that they cannot make a gift at the required level without compromising their own continued lifestyle and financial security. However, it is possible in many cases to structure gifts in a manner that preserves access to the gifted assets. For spouses, one popular gifting technique is to make a gift to what is known as a “spousal lifetime access trust” or “SLAT.” A SLAT is a trust created by one spouse that includes the other spouse as one of the beneficiaries. As long as the spouses remain married and as long as the beneficiary spouse remains alive, distributions can be made to that beneficiary spouse and used to benefit the couple. Another popular technique is to make gifts to a long-term, “dynasty” type, generation-skipping trust to pass wealth to future generations outside of the estate, gift and GST tax system forever.

Every situation is different, but clients with substantial estates who would like to consider means of “locking in” the current exemption should contact their Vorys attorney to discuss their options.