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M INTELLIGENCE

GIFT NOW! ACT BEFORE BASIC EXCLUSION AMOUNTS SUNSET

The December 31, 2025 sunset (halving) of current high gift, estate, and generation-skipping transfer (GST) exclusions created by the Tax Cuts and Jobs Act (TCJA) is fast approaching. This offers high-net-worth and ultra-high-net-worth individuals, including those who have already made sizable gifts, a substantial time-sensitive wealth transfer opportunity.

While income taxes apply to earned and unearned income, transfer taxes (gift, estate, and GST taxes) apply to transfers of property. Gifts to children in excess of available exclusions are subject to gift taxes while gifts to grandchildren and subsequent generations in excess of available exclusions are subject to gift and GST taxes.[1] Likewise, gifts to a dynasty trust, a multi-generational trust for the benefit of children, grandchildren, and future generations, are subject to both gift and GST taxes unless sheltered with available exclusions.

EXCLUSIONS[2]

The tax code provides each individual with gift, estate, and GST basic exclusion amounts ("exclusions"). Currently, each exclusion equals $13.61 million ($27.22 million combined for married couples).[3] This allows each individual to transfer up to $13.61 million to a dynasty trust with no gift or GST taxes. Importantly, future growth of transferred amounts is sheltered from those taxes as well. Although earnings on those amounts remain subject to income taxes, as long as they remain in trust they escape repeat gift, estate, and GST taxes at each generation.[4, 5] Generally, prior gifts reduce the exclusions available today, and they are "unified" in

that lifetime gifts reduce the exclusions available at death.[6] Individual exclusions are estimated to increase to approximately $14 million in 2025 ($28 million for a married couple).

Referred to as a "sunset," these current high exclusions are scheduled by law to be reduced by one-half on December 31, 2025.

Therefore, at the end of 2025 those amounts will be cut in half to $7 million ($14 million for a married couple).

Example 1

Assume a wealthy husband and wife, ages 65 and 62 respectively, and in excellent health. Following the recent sale of their closely held business, their combined estate equals $135 million, mainly comprised of marketable securities and personal residences. They have not used any of their lifetime gift and GST exclusions. Gifting their combined exclusions in 2025 transfers $28 million into a dynasty trust for the benefit of children, grandchildren, and future generations and removes that amount from their taxable estates. Depending on the state where the trust is domiciled, that $28 million and its growth escapes repeat estate taxation for potentially hundreds of years or more (depending on the state where the trust is sited).[7] On the other hand, if they wait until after sunset to gift, they will only have $14 million of combined available exclusions to fund the trust.

INFLATION

The exclusions reflect increases in the chained consumer price index, best illustrated by an example.

Example 2

Assume that exclusions continue to increase post-sunset by 2.5% annual inflation. If a husband gifted his full $14 million exclusions by the end of 2025, it would take 30 years (2055) for the reduced $7 million exclusions to exceed $14 million (See Table 1, column A). At that time, he could begin to make additional gifts equal to increases in excess of the amounts already gifted.[8] On the other hand, if he made no lifetime gifts until 2026 (post-sunset) when he gifted an amount equal to the available $7 million exclusion, he will be able to make additional gifts in each subsequent year as the exclusion increases due to inflation (See Table 1, column E).

Table 1: Hypothetical Sunset, Growth of Exclusion and Maximum Gifts

	(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)
	EXCLUSION	GIFT NOW!			GIFT POST SUNSET			IMPROVEMENT
Year	Inflate After 2026 2.50%	Gift Exclusion Increases	Cumulative Gifts	EOY Balance 6.00%	Gift Exclusion Increases	Cumulative Gifts	EOY Balance 6.00%	Additional Wealth Transferred
2024	13,610,000	13,610,000	13,610,000	14,426,600	0	0	0	0
2025	14,000,000	390,000	14,000,000	15,705,596	0	0	0	0
Sunset December 31, 2025								
2026	7,000,000	0	14,000,000	16,647,932	7,000,000	7,000,000	7,420,000	9,227,932
2027	7,175,000	0	14,000,000	17,646,808	175,000	7,175,000	8,050,700	9,596,108
2028	7,354,375	0	14,000,000	18,705,616	179,375	7,354,375	8,723,880	9,981,737
2029	7,538,234	0	14,000,000	19,827,953	183,859	7,538,234	9,442,203	10,385,750
•••								
2052	13,302,049	0	14,000,000	75,737,817	324,440	13,302,049	47,796,600	27,941,217
2053	13,634,600	0	14,000,000	80,282,086	332,551	13,634,600	51,016,900	29,265,186
2054	13,975,465	0	14,000,000	85,099,011	340,865	13,975,465	54,439,231	30,659,780
2055	14,324,852	324,852	14,324,852	90,549,295	349,387	14,324,852	58,075,935	32,473,360

Based on 6% growth of trust assets, 2.5% inflation of exclusions, and that maximum gifts are made every year, by 2055, the same amounts will have been gifted in either scenario ($14.32 million, Table 1, columns C and F). However, the Gift Now! Scenario will have transferred $32.4 million more in a dynasty trust than the Gift Post-Sunset scenario.

It is important to note that, in 2055, while $32.4 million more has been transferred into a dynasty trust in the Gift Now! scenario, the children will receive $19 million less from the estate than in the Gift Post-Sunset scenario.

This is the essence of wealth shifting — moving estate assets that would be subject to current and repeat estate taxation into a multi-generational trust that is exempt from gift, estate, and GST taxes — for potentially hundreds of years.

Individuals who gifted over $7 million pre-sunset will not have additional exclusion gifting opportunities until, due to inflation, the halved exclusion catches up to their amount of pre-sunset gifting. If the husband in the previous example had gifted $7.5 million pre-sunset, he would not be able to make additional gifts until 2029 when the exclusion had increased to $7,538,234. At that time, he could gift an additional $38,234 (See Table 1, column A, year 2029 above).

PLANNING POINTERS

There are a number of important considerations regarding planning and the use of exclusions:

1. The current unsettled political climate could profoundly impact the future of federal transfer tax laws (gift, estate, and GST). This should not dissuade individuals from planning. Thoughtful estate planning is always advisable regardless of the state of gift, estate, and GST taxes.
2. Don't wait. Individuals who wait until the end of 2025 to engage in planning may be sorely disappointed. Estate planning takes time and multiple steps:
   - Selecting, transferring, retitling and valuing assets
   - Defining and refining trust terms and identifying and engaging trustees
   - Reviewing, selecting, designing, and implementing planning strategies
   - Underwriting and placement of life insurance
   - Managing complex and oftentimes emotional family dynamics

Perhaps most importantly, as the sunset approaches, the best trust and estate attorneys, valuation firms, and other advisors will be in high demand and may be unavailable.

Planning now increases the likelihood you can engage the best advisors and successfully execute complex planning at a more relaxed and thoughtful pace.

3. For individuals who are not yet ready to make substantial gifts, creating a dynasty trust today and selling or lending assets to the trust allows for the time needed to work through the complexities of estate planning, and importantly, the time to decide if, and when, to gift. As 2026 approaches, it is a simple matter to convert a sale or loan into a gift by simply forgiving the promissory note supporting the sale or loan.
4. Since 2021, exclusions have increased by nearly $1.9 million ($3.8 million for a married couple) and are expected to increase by $500,000 per individual in 2025. This offers a significant planning opportunity for individuals who have already engaged in substantial planning.[9]
5. Creating and funding dual spousal lifetime access trusts (dual SLATs) can provide the best of both worlds by allowing the marital couple to remove the gifted

assets (and their future growth) from their taxable estates while maintaining control of, and access to, gifted assets.[10]

6. Gifting assets that can be "discounted" magnifies the wealth transferred with the available exclusions.

   Example 3

   Assume an individual owns commercial real estate or a closely held business interest. Gifting minority and noncontrolling interests in those assets result in valuation discounts. Based on a 30% discount, an individual with $14 million of available exclusion could shelter the gift of $20 million of "underlying value" ($40 million for a married couple with $28 million of available exclusions).[11]

   Even a non-managing interest in a "marketable securities only LLC" may be entitled to meaningful discounts.

7. Life insurance is unique in that it provides an immediate income tax-free benefit to the trust that can be used to provide funds to the estate to pay estate taxes.

Trust-owned life insurance funded with a portion of the cash flow from trust assets can be an effective wealth transfer and diversification strategy that creates a more resilient estate plan.

A qualified advisor can guide you through the insurance process helping to:

– Review and select the most appropriate policy and carrier

– Advocate on the applicant's behalf to negotiate the best underwriting offer

– Design the product, policy ownership, and funding to suit the particular goals, objectives, and needs of you and your family.

CONCLUSION

In closing, by planning in advance of TCJA's fast approaching sunset, it's easier to implement a timely and well-designed estate plan and/or gifting strategy that takes optimal advantage of current high gift, estate, and generation-skipping transfer tax exclusions.

ENDNOTES

[1] Gifts (not sheltered by annual exclusions or basic exclusion amounts) to children in excess of lifetime gift exclusions are taxed at a 40% federal rate, while such gifts to grandchildren and subsequent generations are taxed at a 40% gift tax and additional 40% GST tax for a combined 80% tax.

[2] The Tax Code and Regulations define exclusions in terms of the "applicable exclusion amount" and the "basic exclusion amount." See Code Sec. 2010.

[3] The Tax Cuts and Jobs Act (TCJA) of 2017 increased the gift, estate, and generation-skipping transfer (GST) tax exclusions for the years 2018 through 2025 indexed for inflation based on the chained CPI.

[4] Amounts can be transferred directly to individuals, but it (1) is much less efficient as a wealth transfer vehicle (those assets will be taxable in the individual's estates) and (2) subjects those assets to the individual's creditors including an ex-spouse.

[5] If the trust is a "grantor trust", trust earnings will be taxed to the grantor — a free gift, estate, and GST transfer to the dynasty trust.

[6] Gifts that qualify for the annual gift tax exclusion ($18,000 per donor per donee in 2024) do not reduce the lifetime gift/estate exclusions. Likewise, gifts to spouses generally qualify for the unlimited marital deduction and do not reduce the lifetime exclusions.

[7] For example, Nevada's rule against perpetuities (the state law that determines how long a trust can run) is 365 years while Rhode Island, South Dakota, and Alaska's laws allow for trusts that are essentially perpetual.

[8] Code Secs. 2010 and 2505 and Treas. Reg. Sec. 20.2010-1(c)

[9] See the M Intelligence piece "Leverage Increases to Gift, Estate, and GST Exclusions — Before They Sunset"

[10] There are a number of powerful gifting strategies, for example, where a married couple is only comfortable gifting one spouse's exclusion. See the M Intelligence piece "Life Insurance Enhances Planning with SLATs."

[11] The valuation should be based on a qualified appraisal of the non-controlling interest, and a gift tax return would be required. Although the IRS could contest the reported value, provided the details of the gift are adequately disclosed on the gift tax return (for example, including the valuation report), after three-years, the statute of limitation "runs" and the IRS can no longer contest the value.

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