Estate and Gift Taxation

SECOND EDITION

2018 SUPPLEMENT

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On December 22, 2017, President Donald Trump signed into law a major piece of tax legislation, the official title of which is an Act "To provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018," but which is more commonly referred to as the "Tax Cuts and Jobs Act of 2017."[1] The principal effect of the legislation on the estate, gift, and GST taxes was to double the estate and gift tax basic exclusion amounts from $5 million to $10 million for calendar years 2018 through 2025.[2] Because the GST exemption is defined by reference to the basic exclusion amount,[3] the legislation also had the effect of doubling the GST exemption. The legislation also changed the method used to calculate inflation adjustments for 2018 and later years. Under the Act, the $10 million exclusion and exemption amounts are adjusted by reference to the Chained Consumer Price Index for All Urban Consumers (as published by the Bureau of Labor Statistics of the Department of Labor),[4] rather than the regular Consumer Price Index as under pre-2018 law. The Chained Consumer Price Index tends to increase more slowly than the regular Consumer Price Index. The inflation-adjusted basic exclusion amount and GST exemption for 2018 is expected to $11.18 million, which is slightly less than twice the inflation-adjusted figures for 2017. The increased exclusion and exemption amounts are temporary; unless later extended by Congress, the increased amounts will revert to $5 million in 2026. The change in the inflation-adjustment methodology, however, is permanent. For 2018, the new inflation-adjusted gift tax annual exclusion is expected to be $15,000.

The following are revised versions of the Chapter 1 study problems:

1. Applying the rate schedule, the unified credit levels, and the $15,000 amount of the inflation-adjusted § 2503(b) gift tax annual exclusion in effect for year 2018 to all years at issue, calculate Frank's gift and estate tax liability resulting from the following transfers:

- In Year 1, Frank transfers $4 million to each of his two children.

- In Year 4, Frank transfers to his brother stock in his closely held business having a $6 million appraised value.

- In Year 8, Frank dies with assets included in his gross estate valued at $14 million. After paying administrative expenses and funeral expenses, $13.5 million remains to be distributed to Frank's children.

2. For purposes of this problem, assume that Frank in problem 1 above (a) did not make the Year 4 gift to his brother, and (b) left the balance of the property included in his gross estate outright to his surviving spouse. As a result of the marital deduction under § 2056, Frank's taxable estate was reduced to zero. In addition to the assets received from Frank, what other benefit does Frank's spouse receive?

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[1] Pub. L. No. 115-97, 131 Stat. 2054.
[2] *Id.* § 11061(a), 131 Stat. at ____.
[3] IRC § 2631(c).
[4] Pub. L. No. 115-97, § 11002, 131 Stat. at ____.

3. Approximately five years prior to her death, Barbara created an irrevocable trust for the benefit of her children, naming a local bank to serve as trustee. The trust provides that the trustee may distribute trust income or principal to Barbara's children in the trustee's sole discretion. Upon the death of Barbara's last child, the trust assets are to be distributed to Barbara's then-living grandchildren. Barbara funded the trust with $6 million.

Through her will, Barbara made specific bequests of $4 million to each of her four grandchildren. She left the residue of her estate, valued at $24 million (before reduction for any federal transfer taxes, which were charged against the residue), to her two children in equal shares.

Assuming that 2018 exemption levels apply to all of the transfers, identify which federal transfer taxes will apply (a) when Barbara funds the trust, (b) when Barbara dies, and (c) when the last of Barbara's children die.