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Estate Planning Inflation Adjustments for Tax Year 2018 & 2017-2018 Priority Guidance Plan

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Revenue Procedure 2017-58

Many estate planning provisions of the Internal Revenue Code contain brackets, exemptions, exclusions, deductions, or other figures that the IRS adjusts annually for inflation. Every year around this time, the IRS releases these figures for use during the upcoming year. That tradition continues with Revenue Procedure **2017-58**.

Transfer Tax Provisions

Taxpayers will see their basic exclusion amount (and GST exemption amount) increase in 2018 to $5,600,000. This $110,000 increase from 2017 may provide additional planning opportunities. Other relevant figures will also increase in 2018. The annual exclusion for gifts to a spouse who is not a U.S. citizen increases to $152,000, a $3,000 increase from last year, and the gift amount from a foreign person that triggers information reporting obligations by the recipient slightly increases by $314 to $16,111. The gift tax annual exclusion increases by $1,000 to $15,000 per individual.

A summary table of relevant gift and estate figures as adjusted for tax year 2018 is provided below. Previous years are added for context.

Adjustment	2016	2017	2018
Basic exclusion amount and GST exemption amount	$5,450,000	$5,490,000	**$5,600,000**
Gift tax annual exclusion	$14,000	$14,000	**$15,000**
Annual exclusion for gifts made to spouse who is not a U.S. citizen	$148,000	$149,000	**$152,000**
Information reporting on large gifts received from a foreign person	$15,671	$15,797	**$16,111**
"2-Percent Portion" under § 6166	$1,480,000	$1,490,000	**$1,520,000**
Special valuation under § 2032A	$1,110,000	$1,120,000	**$1,140,000**

Estate and Trust Income Brackets

Estate and trust income brackets contain minor changes for tax year 2018. These changes are highlighted in the table below.

Tax Year 2017		Tax Year 2018	
If Taxable Income is:	The Tax is:	If Taxable Income is:	The Tax is:
Not over $2,550	15% of the taxable income	Not over $2,600	15% of the taxable income
Over $2,550 but not over $6,000	$382.50 plus 25% of the excess over $2,550	Over $2,600 but not over $6,100	$390 plus 25% of the excess over $2,600
Over $6,000 but not over $9,150	$1,245 plus 28% of the excess over $6,000	Over $6,100 but not over $9,300	$1,265 plus 28% of excess over $6,100
Over $9,150 but not over $12,500	$2,127 plus 33% of the excess over $9,150	Over $9,300 but not over $12,700	$2,161 plus 33% of the excess over $9,300
Over $12,500	$3,232.50 plus 39.6% of the excess over $12,500	Over $12,700	$3,283 plus 39.6% of the excess over $12,700

Information Reporting and Penalties

In addition to the transfer tax figures above, the IRS adjusts penalties for inflation. For the 2018 tax year, the failure to file a tax return within 60 days after the due date results in a penalty equal to the lesser of $215 or 100% of the amount required to be shown as tax on the return.

The failure to file a correct information return generally results in a penalty of $270 per return. If the failure is due to the taxpayer?s intentional disregard, the penalty for 2018 equals the greater of (i) $540 or (ii) 10% of the aggregate amount of items required to be reported correctly. Recall that Form 8971 is an information return and subject to these penalties.

Failing to furnish a correct payee statement generally results in a $270 penalty per return. If the failure is due to intentional disregard, the penalty is the same as that imposed for an information return discussed above. Remember that Schedule A to Form 8971 is a payee statement.

2017-2018 Priority Guidance Plan

Each year, the Department of the Treasury and the IRS release a Priority Guidance Plan which identifies the tax issues that the Treasury and the IRS believe should be addressed through regulations, revenue rulings, revenue procedures, notices, and other guidance. The 2017-2018 Plan contains guidance for projects the Treasury and the IRS hope to complete from July 1, 2017, through June 30, 2018. Part 1 of the Plan focuses on the eight regulations from 2016 that Executive Order 13789 identified and the intended actions related to those regulations. Part 2 describes projects the Treasury and the IRS have identified as burden reducing and believe can be completed during the remaining Plan year. Part 3 describes the various projects related to the implementation of the new statutory partnership audit regime, which statutory rules go into effect on January 1, 2018. Finally, Part 4 of the Plan describes specific projects by subject area that will be the focus of the balance of the Treasury and the IRS?s efforts for the 2017-2018 Plan year.

Notably, Part 1 of the Plan includes the withdrawal of the August 4, 2016, proposed regulations under § 2704 regarding restrictions on the liquidation of an interest for estate, gift, and generation-skipping transfer taxes. This was addressed in a prior alert which can be accessed **here**.

Part 2 includes the implementation of regulations under §§ 1014(f) and 6035 regarding basis consistency between an estate and a person acquiring property from a decedent. Part 2 also includes final regulations under § 2642(g) describing the circumstances and procedures under which the IRS will grant an extension of time to allocate GST exemption.

Part 4 contains specific projects for gifts, estates, and trusts, including guidance on the basis of grantor trust assets at death under § 1014, as well as final regulations under § 2032(a) regarding the imposition of restrictions on estate assets during the six-month alternate valuation period. Also included in Part 4 is guidance under § 2053 regarding personal guarantees and the application of present value concepts in determining the deductible amount of expenses and claims against an estate.

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