

Federal Wealth-Transfer Tax Rates and Exemptions*

Year	Maximum Estate-/ Gift-Tax Rate	Estate-Tax Exclusion Amt.	Gift-Tax Exclusion Amt.	GST-Tax [†] Exemption
2001	55% (plus 5% surcharge) [‡]	\$675,000	\$675,000	\$1.06 mil.
2002	50%	\$1 mil.	\$1 mil.	\$1.1 mil.
2003	49%	\$1 mil.	\$1 mil.	\$1.12 mil.
2004	48%	\$1.5 mil.	\$1 mil.	\$1.5 mil.
2005	47%	\$1.5 mil.	\$1 mil.	\$1.5 mil.
2006	46%	\$2 mil.	\$1 mil.	\$2 mil.
2007	45%	\$2 mil.	\$1 mil.	\$2 mil.
2008	45%	\$2 mil.	\$1 mil.	\$2 mil.
2009	45%	\$3.5 mil.	\$1 mil.	\$3.5 mil.
2010	35% (gift tax only)	Estate tax repealed	\$1 mil.	GST tax repealed
2011	55% (plus 5% surcharge) [‡]	\$1 mil.	\$1 mil.	\$1.12 mil. (indexed for inflation thereafter)

*All future tax rates are subject to legislative change.

[†]Generation-skipping transfer tax (see page 25)

[‡]Surcharge applied to estates between \$10,000,000 and \$17,183,999

Advanced Gifting Techniques

Gift Vehicle	Purpose	Description	Estate/Gift-Tax Considerations	GST-Tax Considerations	Income-Tax Considerations
Generation-Skipping Trust or Dynasty Trust	To transfer assets to multiple generations with the least possible transfer-tax cost, typically by combining gift- or estate-tax exemption with GST-tax exemption.	Typically, the trust is designed to last for multiple generations and provide for discretionary distributions to family members.	Assets retained in the trust will not be subject to estate tax.	This trust is designed to be exempt from GST tax.	The trust can be designed to be a grantor trust ¹ during the grantor's lifetime; otherwise it is a taxable trust.
Grantor-Retained Annuity Trust (GRAT)	To transfer to a younger generation any appreciation in the trust assets over the Section 7520 rate, ² with low/no transfer-tax cost; the grantor retains annuity payments.	The grantor contributes assets to the GRAT. The grantor receives a fixed-dollar annuity from the GRAT for a number of years (the "annuity term"). After the end of the annuity term, the remainder typically passes to children or trusts for their benefit.	The grantor can create a GRAT with no gift-tax cost if the present value of the annuities equals the contribution. If the grantor survives the annuity term, any appreciation of trust assets exceeding the Section 7520 rate passes to the remainder beneficiaries free of gift or estate tax. However, if the grantor dies during the annuity term, part or all of the trust assets are included in the grantor's taxable estate, reducing or eliminating the benefit of this vehicle.	Typically, not exempt from GST tax.	The GRAT is a grantor trust.

¹ "Grantor trust" refers to a category of trusts defined by its income-tax character. A "grantor trust" is a pass-through entity for income-tax purposes, and an individual (usually the grantor) is taxed on all trust income.

² The Section 7520 rate is determined monthly based on Treasury-bond yields; the rate in effect at the creation of the trust is used to calculate the present value of the annuity (and acts as the hurdle rate for certain trusts such as GRATs and CLUTs).

Gifting Vehicle	Purpose	Description	Estate/Gift-Tax Considerations	GST-Tax Considerations	Income-Tax Considerations
Installment Sale to Intentionally Defective Grantor Trust (IDGT) ³	To transfer to a younger generation both (i) the amount of the initial outright gift to the trust and (ii) any appreciation in the sale assets over the interest rate on an accompanying promissory note, while retaining the purchase-price value.	The grantor makes an outright gift of at least 10% of the overall transfer to the IDGT. The grantor then sells the remainder of the assets to the IDGT in exchange for a promissory note bearing interest at a federally determined rate. The trust is designed to pass assets to the children or other beneficiaries.	<p>The initial outright gift to the IDGT is a taxable gift that requires use of the grantor's gift-tax exemption, or, if none, payment of gift tax. The sale will not result in a taxable gift if the value of the promissory note equals the value of the sale assets and if the promissory note bears an interest rate sufficient to avoid an imputed gift.</p> <p>Generally, the gift/sale assets are excluded from the grantor's taxable estate upon completion of the transfers. If the grantor dies during the term of the note, the outstanding note balance is included in the grantor's taxable estate.</p> <p>Appreciation of trust assets exceeding the interest rate on the note passes to the remainder beneficiaries free of gift or estate tax.</p>	This trust can be designed to be exempt from GST tax.	<p>The IDGT is a grantor trust.</p> <p>Initial sale and interest payments to grantor are ignored for income-tax purposes.</p> <p>If the grantor dies during the term of the note, the income-tax consequences are uncertain, and capital-gains tax may be due on the sale as of the grantor's death.</p>
Charitable Lead Annuity Trust (CLAT) ⁴	To benefit charity and transfer to a younger generation any appreciation in the trust assets over the Section 7520 rate, with low/no transfer-tax cost.	The grantor contributes assets to the CLAT. The designated charity receives a fixed-dollar annuity from the CLAT for a number of years. After the end of the annuity term, the remainder typically passes to children or trusts for their benefit.	The grantor can create a CLAT with no gift-tax cost if the present value of the annuities equals the contribution. The CLAT assets are excluded from the grantor's taxable estate upon completion of the gift to the trust. ⁵ Any appreciation of trust assets exceeding the Section 7520 rate passes to the remainder beneficiaries free of gift or estate tax.	Typically not exempt from GST tax.	The grantor does not receive a charitable income-tax deduction upon creation of the CLAT. The CLAT is not exempt from income taxation, but is entitled to an annual charitable deduction equal to the lesser of (i) the trust income or (ii) the annuity distribution to charity.

³ This vehicle is not described in any tax authority. Accordingly, some income- and transfer-tax consequences remain uncertain, and the strategy may be subject to challenge by the IRS. Hence, this technique requires substantial guidance from knowledgeable tax and legal advisors.

⁴ All CLATs referenced in this study are non-grantor CLATs, in which the trust itself is a taxable entity that receives an annual charitable income-tax deduction for the income distributed to charity. The grantor does not receive a charitable income-tax deduction for the initial CLAT contribution. No CLAT assets are included in the grantor's taxable estate.

⁵ Provided that the grantor cedes control of the use of amounts distributed to charity.

Gift Vehicle	Purpose	Description	Estate/Gift-Tax Considerations	GST-Tax Considerations	Income-Tax Considerations
Private Annuity⁶	To transfer to a younger generation any appreciation in the trust assets over the return of annuity payments to the grantor with low/no transfer-tax cost; the grantor retains annuity payments and defers recognition of income.	The grantor contributes assets to a family member in a younger generation, or a trust for the benefit of younger generations, in exchange for a fixed-dollar annuity paid for a specified period of time or the grantor's lifetime.	The grantor can enter into a private-annuity transaction with no gift-tax cost if the present value of the annuities equals the contribution. Any appreciation of trust assets exceeding the annuity payments returned to the grantor passes to the remainder beneficiaries free of gift or estate tax. ⁷	Not applicable to sales.	The annuity payments to the grantor include ordinary income, capital gain, and return of capital, providing deferral of income taxation on the sale.
Intra-Family Asset Sales or Loans	To transfer to a younger generation any appreciation of assets over the interest rate on a promissory note.	The grantor sells or lends assets to a family member in a younger generation, or a trust for the benefit of younger generations, in exchange for a promissory note bearing interest at a federally determined rate.	The grantor can enter into a sale or loan with no gift-tax cost if the value of the promissory note equals the value of the sold/loaned assets and if the promissory note bears an interest rate sufficient to avoid an imputed gift. Any appreciation of the sold/loaned assets exceeding the interest rate passes to the holders free of gift or estate tax.	Not applicable to sales.	The transaction itself or the grantor's death during the term of the promissory note may trigger capital gains or other income-tax consequences in certain circumstances.
Qualified Personal Residence Trust (QPRT)	To transfer to a younger generation a personal residence at a reduced value for transfer-tax purposes and all subsequent appreciation.	The grantor contributes a personal residence to the QPRT and retains the right to occupy the residence for a number of years. After the end of the term, the remainder typically passes to children or trusts for their benefit.	The contribution to the QPRT results in a taxable gift that requires use of the grantor's gift-tax exemption, or, if none, payment of gift tax. However, the taxable gift is based only on the value of the remainder beneficiary's interest, not the full value of the residence. If the grantor survives the term, then the value of the residence exceeding the taxable gift (including all appreciation in the residence from the time of the gift) passes to the remainder beneficiaries free of gift or estate tax. However, if the grantor dies during the term, the residence is included in the grantor's taxable estate, eliminating the benefit of this vehicle.	Typically not exempt from GST tax.	Typically, the QPRT is a grantor trust.

⁶ The private annuity described here assumes that the annuity is unsecured, so that gain on the sale of the property can be deferred.

⁷ The calculation of the present value of the annuity interest is determined by reference to the Section 7520 rate. However, in cases where the private annuity will be paid according to the grantor's actuarial life expectancy, the Section 7520 rate alone does not determine the amount passing free of gift or estate tax, as the time of the grantor's death will affect that total amount. The benefit of such a private-annuity transaction diminishes when the grantor lives longer than his actuarial life expectancy, and, conversely, increases if the grantor dies before reaching his actuarial life expectancy.

Gift Vehicle	Purpose	Description	Estate/Gift-Tax Considerations	GST-Tax Considerations	Income-Tax Considerations
Irrevocable Life Insurance Trust (ILIT)	To transfer to a younger generation insurance-policy death benefits with low/no transfer-tax cost.	The grantor contributes assets to the ILIT, and the trustee purchases an insurance policy on the life/lives of the grantor and/or grantor's spouse. Alternatively, the grantor may transfer an existing policy to the ILIT. The ILIT trustee owns the insurance policy and receives the proceeds upon the insured's death, which may be held in further trust.	Typically, ILITs are designed to qualify contributions for the annual gift-tax exclusion. A contribution to the ILIT exceeding the annual exclusion may result in a taxable gift that requires use of the grantor's gift-tax exemption, or, if none, payment of gift tax. The insurance policy is excluded from the grantor's taxable estate. ⁸	This trust can be designed to be exempt from GST tax.	Typically, the ILIT is a grantor trust during the grantor's lifetime and becomes a taxable trust upon the grantor's death.
Family Limited Partnership (FLP) or Limited Liability Company (LLC)⁹	To consolidate management, investment, and disposition of assets in a single business entity, and transfer economic interests in the assets to younger generations without providing recipients with direct control over assets.	One or more family members contribute assets to the FLP. The FLP has two classes of owners: general partners (GPs) and limited partners (LPs). GPs own controlling interests and bear FLP liabilities. GPs typically appoint a Managing General Partner who manages the FLP. LPs do not participate in management of the FLP and do not bear FLP liabilities. Depending on the restrictions in the partnership agreement and the nature of the assets contributed to the FLP, certain discounts may be appropriate in the valuation of LP units.	Any discounts properly reducing the value of LP units reduce the gift- or estate-tax exemption used, or gift or estate tax paid, in transferring those units.	Any discounts properly reducing the value of LP units reduce the GST exemption used, or GST tax paid, in transferring those units.	FLP partners are taxed on their respective pro rata shares of income. Dispositions of partnership interests and the funding or dissolution of the FLP may trigger capital gains or other income-tax consequences in certain circumstances.

⁸ If the trustee purchases the insurance policy, it is excluded from the grantor's taxable estate from the point at which the ILIT was created. If the grantor contributes a preexisting policy to the ILIT, the policy will be excluded from the grantor's taxable estate beginning as of the third anniversary of the creation of the ILIT.

⁹ In many states a Limited Liability Company (LLC) is an alternative to an FLP. LLCs and FLPs have slightly different structures, but similar purposes and benefits.

Annual Exclusion Gifts to Minors: Common Vehicles

Many individuals who seek to leverage the “free” annual gift-tax exclusion naturally want to benefit their children, and may be ready to begin gifting while their children are still quite young. Grantors can choose from a variety of vehicles for gifts to their minor children, ranging widely in complexity and flexibility. We describe the most frequently used alternatives below. Generally, a grantor can make contributions exceeding the annual gift-tax exclusion to these vehicles in a single year, but many grantors will not wish to go beyond that limit. This is especially the case if the children are young and the parents have many years of gifting ahead of them.

Gift Vehicle	Description	Revocability	Distributions	Estate-/Gift-Tax Considerations	GST-Tax Considerations	Income-Tax Considerations
Uniform Gifts to Minors Act (UGMA) or Uniform Transfers to Minors Act (UTMA) Account	Custodianship provides legal title for property owned by a minor individual who lacks legal capacity to own the property outright.	Irrevocable: The grantor cannot terminate the custodianship or change the beneficiary.	<p>The custodian typically can make distributions as he or she considers advisable for the use and benefit of the minor.</p> <p>All assets must be distributed to the beneficiary once he or she reaches the age when the custodianship terminates under state law (typically age 18 or 21).</p>	Custodianship assets may be included in the grantor's taxable estate if the grantor acts as custodian.	Annual exclusion gifts are not subject to the generation-skipping transfer (GST) tax.	Income is taxed to the minor beneficiary. ¹
Section 2503(c) Minor's Exclusion Trust	Trust that complies with Internal Revenue Code Section 2503(c) to qualify gifts for the annual gift-tax exclusion until the beneficiary reaches age 21.	Irrevocable: The grantor cannot terminate the trust or change the beneficiary.	<p>The trustee can make distributions for the benefit of the beneficiary. The trust instrument cannot impose substantial restrictions on the purposes for which distributions are allowed.</p> <p>When the trust beneficiary reaches age 21, either the trust must terminate and distribute to the beneficiary or the beneficiary must have the right to withdraw the assets.</p>	<p>Gifts to this trust qualify for the annual gift-tax exclusion until the beneficiary reaches age 21.</p> <p>Trust assets may be included in the grantor's taxable estate if the grantor acts as trustee.</p>	Annual exclusion gifts are not subject to GST tax.	Income is taxed to the trust.

¹ Beneficiaries under age 14 are subject to the “kiddie tax” and will be taxed at the parents' highest marginal income-tax rate on investment income exceeding a certain amount.

Gift Vehicle	Description	Revocability	Distributions	Estate-/Gift-Tax Considerations	GST-Tax Considerations	Income-Tax Considerations
Gift Trust with "Crummey" Withdrawal Powers	Trust that provides the beneficiaries with powers of withdrawal over contributions to qualify gifts for the annual gift-tax exclusion.	Irrevocable: The grantor cannot terminate the trust or change the beneficiaries (though the grantor can name more than one beneficiary of the trust).	The trust instrument must provide the beneficiaries with powers of withdrawal over contributions to the trust, and the trustee must notify beneficiaries of their withdrawal powers, to qualify gifts for the annual gift-tax exclusion. The trustee may make distributions for any purpose described in the trust instrument. No required age of termination applies to this type of trust.	Trust assets may be included in the grantor's taxable estate if the grantor acts as trustee.	Gifts to this type of trust may or may not be subject to GST tax, depending on the terms of the trust instrument. Allocation of GST-tax exemption may be necessary or appropriate for transfers to this type of trust.	Income taxation varies, depending on the terms of the trust instrument.
Section 529 Qualified Tuition Plans	Account created under a state plan complying with Internal Revenue Code Section 529 to accumulate funds for payment of educational expenses on an income-tax-deferred basis.	The grantor can terminate the account or change the account beneficiary. A change to name another member of the original beneficiary's family ² will not be subject to income tax, but may be subject to gift or GST tax if a beneficiary in a generation below the original beneficiary is named. A change to name a beneficiary who is not a family member creates a "non-qualified distribution" (see "Income-Tax Considerations").	Generally, distributions or withdrawals can be made for any purpose, but income-tax consequences will vary (see "Income-Tax Considerations"). No required age of termination applies to this account (unless imposed by particular state plan).	A grantor may elect to use five years of annual gift-tax exclusions at once as a contribution for a beneficiary. ³ Generally, the account assets will not be included in the grantor's taxable estate. (However, if the grantor elects to make five years of annual exclusion gifts at once and dies during the subsequent five-year period, a pro rata portion of the contribution will be included in the grantor's taxable estate.)	Annual exclusion gifts are not subject to GST tax.	Assets grow free of federal income tax while they are held in the account. "Qualified distributions" to pay "qualified higher education expenses" at an "eligible educational institution" are not subject to federal income tax (until 2011). ⁴ "Non-qualified distributions" (those used for a purpose other than described above) are subject to federal income tax (at the distributee's tax rate) on the earnings portion of the distribution and an additional 10% federal penalty. State income taxation varies by state.

² Family members for this purpose include: any ancestor, descendant, or sibling, stepson, stepdaughter, stepbrother, stepsister, stepfather, or stepmother, niece, nephew, uncle, aunt, son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, sister-in-law, cousin (until 2011), or spouse of any such person.

³ The grantor must elect this five-year option on a federal Form 709 gift-tax return, filed in a timely fashion.

⁴ Applicable federal tax regulations define the terms "qualified higher education expenses" at an "eligible educational institution."