

# CHANGES ON THE HORIZON: U.S. ESTATE PLANNING

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# BASICS OF U.S. ESTATE AND GIFT TAX

FOUR BASIS ON WHICH U.S. TAXES INDIVIDUALS FOR ESTATE TAX PURPOSES:

1. U.S. CITIZENSHIP – WORLDWIDE ASSETS
2. U.S. RESIDENCY – WORLDWIDE ASSETS
  - EXEMPTION AMOUNT IS \$11.7 MM, 40% FLAT RATE
  - GIFTS DURING LIFE USES SAME EXEMPTION AMOUNT
  - \$15,000 PER PERSON PER YEAR ANNUAL EXCLUSION
3. EXPATRIATES AND FORMER U.S. RESIDENTS

# CITIZEN/RESIDENT SCENARIOS

- CREATE TRUSTS TO TAKE ADVANTAGE OF TRUST-FRIENDLY LAWS, PRIVACY, ASSET PROTECTION, NO RULE AGAINST PERPETUITIES, ETC. TO REDUCE ESTATE BELOW FEDERAL ESTATE TAX EXEMPTION AMOUNT, ETC.
- GRANTOR TRUSTS – SETTLOR OR SETTLOR'S SPOUSE ARE POSSIBLE BENEFICIARIES, RETAIN CERTAIN POWERS, OUT OF TAXABLE ESTATE
- NON-GRANTOR TRUSTS – SETTLOR, SETTLOR'S SPOUSE HAVE NO INTEREST IN TRUST, BENEFIT OTHERS, OUT OF TAXABLE ESTATE

# CITIZEN/RESIDENT SCENARIOS

- EXPATRIATING U.S. CITIZENS/RESIDENTS TRANSFER THE EXEMPTION AMOUNT TO A TRUST TO REDUCE HOLDINGS TO BELOW THRESHOLD FOR EXIT TAX

# PROPOSED CHANGES

BUILD BACK BETTER ACT PROPOSED SEPTEMBER 13, 2021,  
TO TAKE EFFECT ON JANUARY 1, 2022

1. CITIZENS AND RESIDENTS - EXEMPTION AMOUNT  
LOWERED TO \$5 MM

- INDIVIDUALS WITH \$5MM+ AND COUPLES WITH  
\$10MM+ MAY NEED TO MAKE TRANSFERS OUT OF  
THEIR TAXABLE ESTATE PRIOR TO YEAR-END

## 2. TRANSFERS AT DISCOUNTED VALUES ARE NARROWED

- NON-BUSINESS ASSETS VALUED WITHOUT DISCOUNT
- BUSINESS ASSETS VALUED USING 'WILLING BUYER-WILLING SELLER' ANALYSIS
- TYPES OF ASSETS USED TO FUND A TRUST MUST BE RECONSIDERED

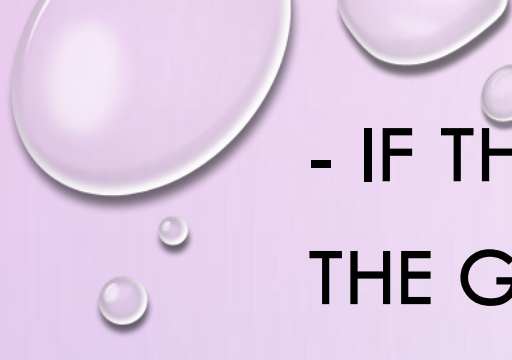
### 3. SALES TO GRANTOR TRUSTS – NEW SECTION 1062

- SWAPPING OF ASSETS IN THE TRUST WOULD NOW TRIGGER CAPITAL GAIN TO THE GRANTOR
- EXISTING TRUSTS GRANDFATHERED IN GENERAL
- CONTRIBUTIONS TO EXISTING TRUSTS SUBJECT TO NEW LAW
- DOES NOT APPLY TO REVOCABLE TRUSTS

## 4. ESTATE TAXATION OF GRANTOR TRUSTS – NEW SECTION 2901

- WHEN A GRANTOR DIES, THE ASSETS OF THE GRANTOR TRUST ARE INCLUDED IN THE GRANTOR'S TAXABLE ESTATE
- DISTRIBUTION FROM A GRANTOR TRUST TO SOMEONE OTHER THAN GRANTOR, GRANTOR'S SPOUSE OR TO DISCHARGE A DEBT IS TREATED AS TAXABLE GIFT FROM GRANTOR TO RECIPIENT





- IF THE TRUST CEASES TO BE A GRANTOR TRUST DURING THE GRANTOR'S LIFE, IT WILL BE TREATED AS A GIFT FROM GRANTOR OF ALL TRUST ASSETS

- GRANTOR TRUSTS, SUCH AS GRANTOR RETAINED ANNUITY TRUSTS, IRREVOCABLE LIFE INSURANCE TRUSTS, SPOUSAL LIFETIME ACCESS TRUSTS ARE ALL SUBJECT TO INCLUSION UNDER THE NEW LAW, IF CREATED ON JANUARY 1, 2021 OR LATER

- TRUSTS MUST BE STRUCTURED AS NON-GRANTOR TRUSTS IN ORDER TO AVOID THIS INCLUSION



# BASICS OF U.S. ESTATE AND GIFT TAX

## 4. NON-RESIDENT NON-CITIZENS - U.S. SITUS PROPERTY

- EXEMPTION IS \$60,000, TAX RATE BEGINS AT 26% AND REACHES 40% AT \$1MM
- AT DEATH, REAL ESTATE, TANGIBLE PERSONAL PROPERTY AND STOCK IN U.S. CORPORATION
- DURING LIFE, REAL ESTATE AND TANGIBLES
  - GIFTS DURING LIFE USES SAME EXEMPTION AMOUNT
  - \$15,000 PER PERSON PER YEAR ANNUAL EXCLUSION

# NRNCS SCENARIOS

- TRANSFERS OF U.S. SITUS PROPERTY TO OFFSHORE TRUSTS TO AVOID U.S. ESTATE AND GIFT TAX
- CREATE TRUSTS TO TAKE ADVANTAGE OF TRUST-FRIENDLY LAWS, PRIVACY, ASSET PROTECTION, NO RULE AGAINST PERPETUITIES, ETC.

# PROPOSED CHANGES

## 5. NON-RESIDENT NON-CITIZEN EXEMPTION OF \$60K REMAINS

- TRANSFERS OF U.S. SITUS PROPERTY TO OFFSHORE TRUSTS TO AVOID U.S. ESTATE AND GIFT TAX
- CREATE TRUSTS TO TAKE ADVANTAGE OF TRUST-FRIENDLY LAWS, PRIVACY, ASSET PROTECTION, NO RULE AGAINST PERPETUITIES, ETC.

# CHANGES NOT INCLUDED

1. TRIGGER OF CAPITAL GAIN UPON DEATH
2. ESTATE TAX RATE REMAINS AT 40%
3. GENERATION-SKIPPING TRANSFER TAX REMAINS
4. DYNASTY TRUSTS REMAIN IN JURISDICTIONS THAT ALLOW
5. GIFT TAX AND ESTATE TAX REMAIN UNIFIED
6. ANNUAL GIFT TAX EXCLUSION OF \$15K REMAINS

# MISC. INCOME PROVISIONS

1. TOP MARGINAL INCOME TAX RATE INCREASED TO 39.6% FROM 37% - TRUSTS FOLLOW
2. SURCHARGE OF 3% OF AGI ON INCOME \$5MM+
3. INCREASE IN TOP CAPITAL GAINS RATE TO 25% FOR CERTAIN HIGH-INCOME INDIVIDUALS
4. \$78BILLION TO THE IRS TO STRENGTHEN ENFORCEMENT, MODERNIZING, ETC.