

# Build Back Better Act: Proposed Changes to Gift and Estate Tax Law

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**PRACTICES** Tax-Exempt Organizations and Private Foundations, Trust and Estate Administration, Family Office, Family Wealth and Estate Planning, Private Clients and Estate Planning, Tax

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In short, the proposed Build Back Better Act (“BBBA”) does the following:

1. Effective January 1, 2022, the BBBA reduces the gift, estate and GST tax exemptions from \$11,700,000 per person (or \$23,400,000 for a married couple) to an amount estimated to be \$6,020,000 per person (or \$12,040,000 for a married couple).
2. Effective the date the BBBA is enacted (passed by Congress and signed by the President), the benefits of a “grantor trust” would be eliminated.
3. Effective the date the BBBA is enacted, discounts for interests in a non-operating business (i.e., passive investments) would be eliminated.

**Disclaimer:** As of the time this article was drafted, the BBBA was in the House of Representatives (the “House”) and the House had not voted on the BBBA. The BBBA will likely be modified as it moves its way through Congress; therefore, these proposed provisions could be modified or removed and the effective dates could change.

## I. Reduction in Gift, Estate, and GST Tax Exemption.

A. Current Law. The current gift and estate tax exemption is \$11,700,000 per person (\$23,400,000 for a married couple); these amounts reflect increases from \$5,000,000 per person in 2017 as part of the Tax Cuts and Jobs Act of 2017 (“TCJA”), and are scheduled to revert to approximately \$6,000,000 per person in 2026 if no other action is taken by Congress.

B. BBBA. The BBBA accelerates the expiration of the temporary increase in exemption for estates of decedents dying and gifts made after December 31, 2021. As a result, the anticipated exemption for 2022 would be \$6,020,000.

C. Planning. Anyone who has made taxable gifts of \$6,020,000 or more on December 31, 2021 will have no remaining exemption on January 1, 2022. In order to preserve some (or all) of the \$5,680,000 of exemption that will disappear on January 1, 2022, an individual would need to make gifts in excess of \$6,020,000 (including prior gifts) by December 31, 2021. For example, if an individual has made taxable gifts of \$3,000,000, he or she would need to make a gift of \$8,700,000 before the end of the year to fully utilize the current exemption.

[Read the full article here.](#)