
BETTER TO ACT BEFORE THE “BUILD BACK BETTER ACT” TAKES EFFECT

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Update as of November 1, 2021: As those in Washington continue to negotiate the terms of the Build Back Better Act, the most recent proposed version of the Act removed any reference to the changes outlined below. The attorneys at Trainor Fairbrook are continuing to follow all proposals and will be providing updates as we know more about what changes we can expect in the final Act (if any).

Published October 20, 2021: The House Ways and Means Committee recently released tax proposals to help pay for President Biden’s planned \$3.5 trillion Build Back Better social spending plan. The Act includes significant changes to estate, gift and generation-skipping tax laws. We defined many of the proposed changes in our previous bulletin linked here. This is an update.

It is important to note that at this time we do not know if the Act will be enacted in its current form or with significant changes, however, if it becomes law, the Act includes three specific changes that will have a direct impact on estate planning. Also, it is essential to understand that time could be of the essence for estate planning clients. While some of the changes would go into effect on January 1, 2022, certain crucial planning tools currently available may be rendered ineffective as of the date of the bill’s passage (which could happen at any time) if they are not implemented before year-end.

Estate, Gift and GST Tax Exemptions

The Act reduces current estate, gift and generation-skipping transfer (GST) tax exemptions by half. Under current law, the 2022 exemption is estimated to be around \$12,000,000 per person. Under the Act, this would be reduced to approximately \$6,000,000 (\$12,000,000 for a married couple). This amount will be indexed for inflation. As a result, some clients may want to use their

full gift and GST tax exemptions (\$11,700,000) in 2021. Note that this is an acceleration of a change that is already on the books scheduled to occur on January 1, 2026.

Grantor Trust Rules

A “grantor trust” is a popular estate planning tool that allows an individual to move assets out of their estate for estate tax purposes but retain the income tax liability associated with those assets. Grantor trusts can be extremely effective in leveraging gift tax and GST exemptions to shift value to future generations. These trusts are known by a myriad of different acronyms, including IDGTs, SLATs, GRATs, ILITs, etc.

The Act has two changes to the grantor trust rules that severely limit the efficacy of creating a new grantor trust or contributing to an existing grantor trust. Unlike current law, a grantor trust would be treated as part of the grantor’s taxable estate for estate tax purposes. In addition, sales between such grantor trusts and their owners would be treated as third-party sales for income tax purposes.

The proposed effective date of the grantor trust changes is the date of enactment of the Act.

Valuation Discounts for Nonbusiness Assets

An effective estate planning strategy is for a client to place assets into a partnership or LLC (a pass-through entity), and then make gifts or sales of entity interests to family members or trusts for their benefit. Currently, the value of these entity interests may be discounted in an amount substantially less than the value of the underlying assets. The Act eliminates the ability to take a valuation discount to the extent those transferred interests hold any nonbusiness assets (such as a vacation home or marketable securities).

As with the grantor trust changes, this change is proposed to be effective on the date of enactment.

Other Tax Changes

While this bulletin focuses on the proposals that will greatly impact estate planning, the Act includes numerous other tax law changes, including:

- Increases to the income tax rates.
- Increases to the dividends and capital gains tax rates.
- Increased minimum distribution requirements for certain qualified plans and IRAs.
- Limitations on the ability of high-income taxpayers to take advantage of Roth conversions.

Over the next few months, we expect to see an uptick in proactive planning in light of current congressional activity. And, while we will not have certainty with respect to many of the proposed changes, we encourage you to contact one of the attorneys in the Estate Planning Department of Trainor Fairbrook as soon as possible to review your planning and perhaps take advantage of the current rules before they change. From a timing perspective, keep in mind that high-level estate planning of this nature takes some time to complete. Whether you ultimately decide to make any estate updates now or not, it's essential that you make time to talk to your estate planning attorney to understand your options if the Build Back Better Act becomes law.