



Georgia Wills & Trusts

February 2018

(v.18.01)

Legal Developments

Increased Federal Tax Exemptions (effective January 1, 2018)

The Tax Cuts and Jobs Act of 2017 doubled the Applicable Exclusion Amount and the GST Exemption Amount by increasing the statutory basic amount from \$5,000,000 to \$10,000,000. After taking into account indexing for inflation under §1(f), the amount for 2018 is...we don't know. In addition to changing the exclusions, Congress also changed the inflation calculations from using the traditional CPI to a Chained CPI, which all analysts agree lowers the impact of inflation adjustments. We expect the amount will be less than the easily computed \$11.2 million (by doubling what it would have been absent TCJA) but more than \$10.46 million that fully retroactive Chained CPI calculations would generate. Some experts have posited \$11.18 million as the correct number, but confirmation must come from the IRS. As a consequence, the Law & Strategy and synopsis have been generalized by using "about \$11 million" as the reference number for the AEA and GST Exclusions. This should be close enough for most clients, for whom these concepts are inherently fuzzy anyway.

Likewise, the Gift Tax Annual Exclusion Amount was scheduled to rise to \$15,000 (up from \$14,000) and would do so if the Chained CPI does not get applied retroactively. Assuming this is not the case, we stated that number as \$15,000 with more confidence. We shall see.

Updated Product Features

New, Slimmer Complex Joint Trust

In response to requests for less complicated structure for the Joint Revocable Trust, we consolidated all the previously listed asset schedules into one Schedule A. Now, all assets added to the Complex Joint Revocable Trust with separate shares will automatically be divided between the spouses' shares. For those who have come to know and love the Schedule A through D (or E) format, a new question will allow you to reinstate that approach. *New Question 6.*

New Unitrust Provisions

A new option has been added to express the "Payment of Income" for the Marital Trust as a unitrust interest. The interest rate is defaulted to 4%, halfway between the bookends of 3% and 5% allowed by O.C.G.A. § 53-12-362 and the range accepted by the IRS as constituting a qualified income interest. Various definitive and administrative terms are included, and an option to allow some distributions of principal, albeit restricted—as befits the unitrust/total return trust concept—are included. If this approach is selected, the new language replaces the "Distribution

of Income” and “Distribution of Principal” paragraphs in the Marital Trust. *Question 471, New Question 476*

Adoption Provision Clarified in Definitions

From a customer suggestion, we excluded the testator/rix and Grantor from the operation of the adoption age limitation. It was always the intention for that restriction (a child must be adopted by a certain age to count) to ensure a meaningful relationship with the adopting parent, typically a second or third generation descendant. It was pointed out that it might apply equally to an older child adopted by the testator/rix or Grantor; although such children would likely be named as takers, we removed the restriction for such an adopted child.

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