

Generation-Skipping Transfer Tax Made Simple(r)

... for 99% of the circumstances you will come across ...

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Short Bio

Spent 11 years in school – got 4 degrees

Been doing this stuff for 31+ years (34+ if you count my years as a CPA)

Work with really smart people whom you may know – George Karibjanian & Richard Franklin

Member of ACTEC

Board Certified Wills Trust & Estates Lawyer by the FL Bar

Was once a CPA (worked with one of the Big 8, b/f becoming an attorney – now in retirement status)

Work in FL and DC

Taught this stuff; Love to do this stuff

Oh, and I like to golf, too!

History of the Estate, Gift and GST Tax

- Estate Tax – 1916
- Gift Tax – 1924, repealed in 1926, re-introduced in 1932
- GST Tax – 1976, repealed in 1977, re-introduced in 1986

- Historical reference - Income tax – introduced by Congress 1909, ratified by the 16th Amendment to the Constitution 1913.

Purpose of the Gift tax

- Be a backstop to the estate tax.
- How? - Just give your money away before you die.
- Note: Today, that's how we avoid state estate taxes in DC and Maryland (by example).

What is the Purpose of the GST Tax?

- Backstop the Estate and Gift Tax

G1, G2, G3, G4 and G5 ...

Generational Assignments:

G1 – Grandparent of G3

G2 – Parent of G3

G3 – You

G4 – Child of G3

G5 – Descendants of G4 (which are G4's children and all future generations)

Example of Avoiding Estate Tax

Assume that

- the GST Tax does not exist and the estate tax rate is 40%.
- G1 is worth \$1.0 B
- G2 is worth \$1.0 B
- G3 has no net worth
- There is no G4 or G5 yet.

Plan A. G1 dies leaving all to G2, and G2 dies leaving all to G3, G3 gets \$0.96B
(i.e., upon G1's death, G2 gets $\$0.6B + \$1B = \$1.6B$, and then upon G2's death, G3 get 60% of $\$1.6B = \$0.96B$)

Example of Avoiding Estate Tax

Assume that

- the GST Tax does not exist and the estate tax rate is 40%.
- G1 is worth \$1.0 B
- G2 is worth \$1.0 B
- G3 has no net worth
- There is no G4 or G5 yet.

Plan B: G1 dies leaving all to G3, and G2 dies leaving all to G3. Upon G1's death and upon G2's death, G3 receive \$0.6B from G1 and \$0.6B from G2, which totals \$1.2B.

Example of Avoiding Estate Tax

Again ... assume a world with NO GST Tax ...

Plan A – G3 gets \$0.96B

Plan B – G3 gets \$1.20B

Difference - \$0.24B

Note: If you divide \$0.24B by 40% (the tax rate), the result is \$0.6B, that's the amount that does not get taxed (if there was no GST Tax).

So, the GST Tax taxes that \$0.6B that would OTHERWISE go untaxed ...

To understand the GST Tax ...

You must understand the terminology and the rules

Need to understand the following:

- Skip Person
- Person
- Transferor
- Direct Skip
- Skip Trust
- Indirect Skip
- Non-Skip Person
- Taxable Termination
- Non-Skip Trust
- Transferee
- Generation Skipping Transfer or GST
- Unrelated Person
- 37 1/2 Year Rule
- Applicable Rate
- GST Exemption
- New Transferor Rule
- GSTT Annual Exclusion
- Inclusion Ratio
- Generational Assignment
- GST Trust
- Pre-September 25, 1985 Trust or "Grandfathered Trust"
- Estate Tax Inclusion Period or "ETIP"
- Taxable Distribution

Definitions

Person –

In the GST rules, a “Person” is the same as defined for the entire Internal Revenue Code ... where a Person is an individual, trust, estate, partnership, association, company or corporation.

Generally, for GST purposes, a ‘person’ is an individual when looking at ‘Transferors’ and ‘Beneficiaries’, and either a trust or an individual when you are looking at ‘Transferees’!

Definitions

Generation-skipping transfer (“GST”) –

A transfer of assets that has **the possibility** of skipping a generation without transfer taxation (gift or estate tax) at the skipped generation level.

Definitions

What is a “Transfer”?

In the world of tax, there are four (4) possible tax implications when one TRANSFERS assets to another. What are they?

1. ?
2. ?
3. ?
4. ?

Transfers

- In the world of tax, there are four (4) possible tax implications when one TRANSFERS assets to another.
 1. Income (for goods or services)
 2. Borrowing money (no tax implications)
 3. Repaying borrowed money (no tax implications)
 4. **Gift (this is what we are talking about)!**

Definition - Transferor

For GST purposes, it is critical that you know who the “Transferor” is ...

So, who is the “Transferor?”

POP QUIZ

- How many types of Transferors are there?

Answer

... Next slide

Definition - Transferor

There are Four (4) Types of Transferors

- **One (1) Actual Transferor**
 - The person who make the transferor (for a lifetime gift, the donor, for a testamentary gift, the decedent).
- **Three (3) “Deemed” Transferors**
 - Gift Splitting Transferor
 - Reverse QTIP Election Transferor
 - New Deemed Transferor after a taxable event (such as a Taxable Termination) – we cover this in the ‘New Transferor Rule’ below

Definition - Transferee

Transferee is that person who receives the property from the transferor (or the person who is deemed to be the transferor).

Person could be either (a) an individual or (b) a trust.

Transferee is either a “**Skip Person**” or a “**Non-Skip Person**”

Definitions – Generation-Skipping Transfer

Example 1:

G₁, the grandparent of G₃, makes a gift of \$20,000 to G₃, her grandchild.

The transfer (which is a gift) is a generation-skipping transfer.

Note: There may be a GST exclusion and/or a GST exemption that may be allocated to the skip, so it won't trigger a GST tax.

Definitions – Generation-Skipping Transfer

Example 2:

G₁ creates a “dynasty trust” that lasts for 1,000 years, for the benefit of her “descendants, *per stirpes*” (i.e., G₂, G₃, G₄ and G₅).

Because the trust has the possibility of passing assets beyond that of G₁'s children (i.e., it can pass beyond G₂, to G₃, G₄ and G₅), even though the transfer is not a generation-skipping transfer, future transfers from the trust could be generation-skipping transfers.

Note: It does not mean that there is a tax liability; like the estate and gift tax, the GST tax has an exemption amount called the “GST Exemption”, this exemption is used to mitigate the tax liability effect of the gift.

Definition – Generation Skipping Transfers or “GSTs”

Two (2) Transfers that are specifically Excluded from being GSTs

- Section 2503(e) Transfers
 - Medical / Tuition Exclusion
- No Double Tax Transfers
 - Can only occur when three (3) requirements are met:
 - The property transferred in a prior transfer was subject to the GSTT;
 - The transferee in the prior transfer was assigned to the same generational assignment (or a lower generational assignment) as the transferee of the current transfer; and
 - The prior transfer and the current transfer do not have the effect of avoiding the GSTT Code § 2611(b)(2)(A).

Do NOT confuse with the GST Exclusion for Annual Exclusion Gifts!

Definitions – Generation-Skipping Transfer

- **Tax Liability** ...

Just because there is a generation skipping transfer, **does NOT mean that there is a tax liability**. It means that there could be a tax liability, either at the time of transfer or at a later point in time.

The GST Tax Liability is calculated as follows:

$$\begin{array}{ccccccc} \text{Amount} & & \text{Inclusion} & & \text{Tax} & & \text{GST} \\ \text{Transferred} & \times & \text{Ratio} & \times & \text{Rate} & = & \text{Tax} \\ & & & & & & \text{Liability} \end{array}$$

If the Inclusion Ratio is Zero (0), even if there is a transfer, there is no liability.

Definitions – POP QUIZ

- If there is a Generation Skipping Transfer, and there is NO GST tax liability, is there any IRS filing Requirement?
- Only 2 possible answers:

YES

NO

Which one is it? Everyone must raise a hand (only once)!

Definitions – POP QUIZ

YES

- What form? We'll get to that later ...

Definitions – Types of GSTs

- There are three (3) types of Generation-Skipping Transfers
 1. Direct Skip (“DS”)
 2. Taxable Distribution (“TD”)
 3. Taxable Termination (“TT”)

Definitions – Direct Skip

- Direct skips happen when the **Transferor** makes a transfer directly to a **Skip Person**
 - Two (2) new words
 - Transferor
 - Skip Person

Definitions – Digression from Direct Skip

u “ p T “ l p
N n p t n e r t T e r s p e
e d d t “ e) h o r a a h r e , s p e
e e e S r a u n s n n) u a e e
d r t r k s d , s o d s n ” (e
s h m i o , s n f n , s (e
t t e s p n ’ k ” a e f .
o a ” a i (r ’ a e
n p ’ o r r

Definitions – Digression from Direct Skip

Need to understand the terms “**Skip Person**” (and, thus, a “**Non-Skip Person**”), and a **Transferor** (and, thus, a “**Transferee**”).

It's all perspective

Definitions – Digression from Direct Skip

u “ p T “ l p
N n p t n e r t T e r s p e
e d d t “ e) h o r a a h r e , s p e
e e e S r a u n s n n) u a e e c t i
d r t r k s d , s o d s n ” (. v e
s h m i o , s n f n , s (.
t t e s p n ’ k ” a e f .
o a ” a i (r ’ a e
n p ’ o r

Definitions – Skip Person and Non-Skip Person

Skip persons – Two Types

1. **Natural Person** (i.e., individual, like you and me)
2. **Trust** (called a “Skip Trust”)

Definitions – Skip Person and Non-Skip Person

Skip person – 2 definitions – one by generational assignment; one by age.

Natural Person –

“A natural person assigned to a generation which is 2 or more generations below the generational assignment of the Transferor”

Definitions – Skip Person

- Concepts
 - Natural Person
 - “assigned to a generation” below the
 - “generation assignment of the transferor”

Definitions – Skip Person

- Natural Person – easy ... it's a human being
 - Example 3:
G1 (a human being), gives G2 (G1's child) and G3 (G1's grandchild) a gift of \$1 million

G1, G2 and G3 are all natural persons

Definitions – Skip Person

- “ ... assigned to a generation which is 2 or more below the generation assignment of the transferor ...”

Look to the recipient ... if the recipient of the property (called the “Transferee”) has a “generational assignment” that is 2 or more below the generational assignment of the transferor, then the recipient/transferee is a “Skip Person”

In our example, **G3 is a Skip Person**, and **G2 is a Non-Skip Person**.

Definitions – Skip Person – Skip Trust

- Skip Trust – is a trust where all of the interests in the trust are held by “Skip Persons” (i.e., the only beneficiaries are natural persons who are skip persons (relative to the transferor))

Definitions – Skip Person

- Two Rules –
 - Unrelated Person Rule
 - Predeceased Parent Rule

Definitions – Skip Person

- Rule 1 - Unrelated Person Rule
 - If the transferee (natural person) is UNRELATED to the transferor, then to determine if a person is a “skip person” (or a “non-skip person”) you look to the relative ages of the transferor and transferee.
 - If the age difference is more than 37 ½ years ... then the transferee is deemed to be two(2) or more generations below the transferor, therefore, the transferee is a skip person, relative to the transferor

Definitions – Skip Person

- Rule 1 - Unrelated Person Rule

- **Example 4** – My unrelated friend, Kevin, and I are the same age. Kevin has two children, Molly, who is 35 years younger than me and Jack who is 40 years younger than me.
- If I make a gift to each of Molly and Jack. RESULT: Jack is a Skip Person relative to me (because he is more than 37 ½ years younger). Molly is a Non-Skip Person relative to me (because she is less than 37 ½ years younger)
- It is irrelevant that Jack (an unrelated person) appears to be only one generation below me.
- If Kevin was my brother, and Jack was my nephew, even though Jack is more than 37 ½ year younger, he is a non-skip person, because the age requirement only applies to UNRELATED persons! Of course, Molly is also a Non-Skip Person, too.

Definitions – Skip Person

- Rule 2 - Predeceased Parent Rule
 - Only applies to Transferees who are related to Transferors!
 - If, at the time of the transfer, the parent of the transferee has died, then the transferee stands in the shoes of the parent.

Definitions – Skip Person - Examples

- **Example 5**

G1, G2 and G3 are all alive.

G1 makes a gift of \$100,000 to his grandchild, G3.

G3 is a Skip Person, because relative to G1, G3 is a natural person assigned to a generation which is two (2) or more generations below the assignment of the transferor (G1)

Definitions – Skip Person - Examples

- **Example 6**

G1 and G3 are alive. G2 has died.

G1 makes a gift of \$100,000 to his grandchild, G3.

G3 is **not** a Skip Person, because of the predeceased parent rule, that says, if at the time of the Transfer, the Transferee's parent has died, then the Transferee stands in the place of the pre-deceased parent. In this case, G3, moves up in generational assignment to G2, and G2, relative to G1 is not two (2) or more generations below G1.

Note, if G4 was alive, G4 would move up to G3 (and so forth for G5, etc.)

Definitions – Skip Person - Examples

- **Example 7**

G1 makes a gift to a person, X, an unrelated person to G1, who is 50 years G1's junior.

X is a skip person, because X is more than 37 ½ years younger than G1.

Note: If X's parent, who was G1's age had died, X will still be a skip person (**the Predeceased Parent Rule does not apply to unrelated Transferors and unrelated Transferees**).

Definitions – Skip Person - Examples

- Example 8

G1, G2 and G3 are alive. G3 is only 36 years younger than G1. G1 makes a gift of \$100,000 to his grandchild, G3.

G3 is a skip person

Note: with related persons, age is irrelevant. By example, if G1 made a gift to her son, G2, who is 50 years younger than G1, the gift is to a non-skip person, because G2 is not 2 or more generations below G1 (i.e., age is irrelevant with related persons).

Definitions – Skip Trust

- Recall – Skip persons are either “natural persons” or “trusts”
- By definition, a “Skip Trust” is a “Skip Person”, if the only natural person beneficiaries of the trust, relative to the transferor are skip persons.
- Stated otherwise, if there is at least one (1) Non-Skip Person, then the trust cannot be a Skip Trust, and thus cannot be a Skip Person.

Definitions – Skip Trust

- **Example 9:**

- Facts:

- G1, is G2's parent, G3's Grandparent, and G4's great grand parent
- T, a trust is created for the benefit of all of G1's descendants
- G1, G2, G3 and G4 are all alive.
- G1 makes a transfer into T of \$1,000,000

Result:

G2 is not a skip person, because G2 is not two (2) or more generations below G1. Thus, because NOT all the beneficiaries are skip persons, T is NOT a skip trust; therefore, T is not a skip person.

Definitions – Skip Trust

- **Example 10:**

- Facts:

- G1, is G2's parent, G3's Grandparent, and G4's great grand parent
- T, a trust is created for the benefit of all of G1's descendants
- G1, G3 and G4 are alive. G2 predeceased G1.
- G1 makes a transfer into T of \$1,000,000

Result:

Note that G2 is dead. Because of the predeceased parent rule, at the time of the transfer, G3 is not a skip person, because G3 steps into the shoes of G2 (i.e., a non-skip person), and G3, is thus DEEMED to be not two (2) or more generations below G1. Thus, because NOT all the beneficiaries are skip persons, T is NOT a skip trust; therefore, T is not a skip person.

Definitions – Skip Trust

- **Example 11:**

- Facts:

- G1, is G2's parent, G3's grandparent, and G4's great grand parent
 - T, a trust is created for the benefit of G3 and G4 (i.e., **G2 is NOT a beneficiary**)
 - G1, G2, G3 and G4 are alive.
 - G1 makes a transfer into T of \$1,000,000

Result:

In this case, all of the beneficiaries of the trust are skip persons relative to G1 (i.e., G3 and G4 are two or more generations below G1), the trust, T, is a Skip Trust.

Definitions – Skip Trust

- **Example 12:**

- Facts:

- G1, is G2's parent, G3's grandparent, and G4's great grand parent
- T, a trust is created for the benefit of G3 and G4 (**i.e., G2 is NOT a beneficiary**)
- G1, G3 and G4 are alive. **G2 has died.**
- G1 makes a transfer into T of \$1,000,000

Result:

In this case, because the predeceased parent rule, recall that G3 steps into the shoes of G2, and thus, relative to G1, G3 is not DEEMED to be two (2) or more generations below G1. Thus, not all of the beneficiaries of the trust are skip persons relative to G1 (i.e., G3 is not, and G4 is); thus, the trust, T, is a not a Skip Trust, and the trust, T, is not a skip person.

Definitions – Non-Skip Person

- A **Non-Skip Person**, is

“any person who is not a skip person.”

(Note: that is literally what the law says!)

Definitions – now ... back to Direct Skips

- A “**Direct Skip**” occurs when the Transferor makes a transfer directly to a skip person (recall that a Skip Trust is a skip person).

Definitions –Direct Skips

- **Example 13:**

- G1, G2 and G3 are all alive.

- G1 makes a gift of \$100,000 to her grandchild, G3.

- **Result**

- The transfer from G1 to G3 is a direct skip.

- **Reason**

- G3 is a skip person, because relative to G1, G3 is a natural person assigned to a generation which is two (2) or more generations below the assignment of the transferor (G1).

Definitions – Direct Skips

- **Example 14**

G1, G2 and G3 are all alive.

G1 makes a gift of \$100,000 to her child, G2.

- Result

The transfer from G1 to G2 is NOT a direct skip.

- Reason

G2 is a non-skip person, because relative to G1, G2 is a natural person assigned to a generation which is not two (2) or more generations below the assignment of the transferor (G1). A transfer from a transferor to a non-skip person is not a direct skip. It may be a gift for gift tax purposes, but not a generation-skipping transfer.

Definitions –Direct Skips

- **Example 15**

G1 and G3 are alive. G2 (G3's parent) has died
G1 makes a gift of \$100,000 to her grandchild, G3.

- **Result**

The transfer from G1 to G3 is **NOT** a direct skip.

- **Reason**

G3 is a **Non-Skip Person**, because of the predeceased parent rule. Thus, even though in reality G1 is G3's grandchild, for GST tax purposes, relative to G1, G3 is DEEMED to move into G2's shoes, thus, G3 is not a skip person, and the transfer is not a direct skip.

Definitions –Direct Skips

- **Example 16:**

- Facts:

- G1, is G2's parent, G3's Grandparent, and G4's great grand parent
- T, a trust is created for the benefit of all of G1's descendants
- G1, G2, G3 and G4 are all alive.
- G1 makes a transfer into T of \$1,000,000

Result:

The transfer is NOT a direct skip.

Reason:

T, a trust, is not a skip trust, because G2 (one of the trust's beneficiaries) is not a skip person, because G2 is not two (2) or more generations below G1. Thus, because NOT all the beneficiaries are skip persons, T is NOT a skip trust; therefore, T is not a skip person, and there is no direct skip.

Definitions –Direct Skips

Example 17:

- Facts:
 - G1, is G2's parent, G3's Grandparent, and G4's great grand parent
 - T, a trust is created for the benefit of all of G1's descendants
 - G1, G3 and G4 are all alive. G2 has died.
 - G1 makes a transfer into T of \$1,000,000

Result:

The transfer is NOT a direct skip.

Reason:

T, a trust, is not a skip trust, because G3 (one of the trust's beneficiaries) is not a skip person, because of the pre-deceased parent rule. G3 stands in the shoes of G2, who would not be a person who is two (2) or more generations below G1. Thus, because NOT all the beneficiaries are skip persons, T is NOT a skip trust; therefore, T is not a skip person, and there is no direct skip.

Definitions – Some Random Thoughts

- **Example 16** is a common situation ... why then do we worry about GST Taxes, if this is not a Direct Skip?
 - Remember the facts:
 - G1, is G2's parent, G3's Grandparent, and G4's great grand parent
 - T, a trust is created for the benefit of all of G1's descendants
 - G1, G2, G3 and G4 are all alive.
 - G1 makes a transfer into T of \$1,000,000

Result:

The transfer is NOT a direct skip.

Then why worry?

Definitions – Some Random Thoughts

Because ... in **Example 17**, when funds are DISTRIBUTED from the trust (to one or more beneficiaries), the DISTRIBUTION (i.e., transfer) could be a “Generation Skipping Transfer” ... it could be one of the two (2) other Generation Skipping Transfers ...

1. **Taxable Distribution**, or
2. **Taxable Termination**

reverse

Let’s discuss “Taxable distributions” and “Taxable terminations” (in order)

Definitions – Taxable Termination

A taxable termination occurs when, in a Non-Skip Trust, the last Non-Skip Person's interest ends (i.e., terminates), and, at that moment in time, the Non-Skip Trust has only Skip Persons as beneficiaries.

GENERALLY (99.99% of the time), a Taxable Termination occurs when a beneficiary of a Non-Skip Trust dies.

Taxable Distributions and Taxable Terminations

MUST REMEMBER THIS (*think Casablanca*)

A Taxable Distribution and/or Taxable Termination **can ONLY apply IF** there has been a TRANSFER **FROM** a trust **TO** a beneficiary.

A Taxable Distribution and/or Taxable Termination **CANNOT apply IF** there is a **CONTRIBUTION INTO** a TRUST.

CONTRIBUTIONS can ONLY be Direct Skips (if at all).

CONTRIBUTIONS could be a non-event for GST purposes.

Definitions – Taxable Termination

Three (3) important concepts:

1. A “Taxable Termination” can only occur in Non-Skip Trusts.
2. A “Taxable Termination” can only occur when the last Non-Skip Person is no longer a beneficiary (most cases this is when the **LAST** (or only) Non-Skip Person dies).
3. A “Taxable Termination” does not necessarily mean that the trust terminates. It just means that a person (the only Non-Skip Person) who was a beneficiary is no longer a beneficiary. The trust could terminate, but it is not required that the trust terminate. And, there may be, or may not be a tax liability ... it depends if the trust is GST Exempt ... or not!

Definitions – Taxable Terminations

A Fourth Concept

The “New Transferor Rule”: The “Move Up” Rule or the “Changing Transferor” Rule occurs whenever there is a Taxable Termination:

The New Transferor Rule provides that the person who was the transferor immediately before the Taxable Termination is no longer the Transferor immediately after the Taxable Termination, the NEW Transferor (immediately after the Taxable Termination) will be the person who is exactly one (1) generation above the Beneficiary who has the most senior generational assignment.

Definitions – Taxable Terminations

A Fourth Concept

WHAT DOES THAT MEAN????

Again, best explained with an Example ... Example 18 ...

Definitions – Taxable Terminations

Example 18: (This is **Example 16** taken to the next level)

Facts of **Example 15:**

- G1, is G2's parent, G3's Grandparent, and G4's great grand parent
- T, a trust is created for the benefit of all of G1's descendants
- G1, G2, G3 and G4 are **all** alive.
- G1 makes a transfer into T of \$1,000,000

Additional Facts:

- G2 dies X number of years later (it is irrelevant how many years later).
- Result at time of gift – this **was not** a generation-skipping transfer. For gift taxes, it was a gift and a transfer, but for GST purposes, it was NOT a GST (i.e., it was **NOT** a “Generation-Skipping Transfer”
- Result at time of G2's death – this **is** a generation-skipping transfer. This is a “**Taxable Termination**”!
 - See next page for explanation ...

Definitions – Taxable Termination

The Four Concepts

1. T was not a Skip Trust (at the time of the transfer up until the moment before G2's death, T, the trust, was a Non-Skip Person, and thus was not a Skip Trust)
2. G2, the decedent, was the only Non-Skip Person, thus, at the instant of G2's death (immediately after G2's death) there were only Skip-Persons (i.e., G3 and G4).
3. T, the trust, did NOT terminate after G2's death, it simply continued (for G3 and G4).
4. As a result of G2's death, the New Transferor Rule applied, thus, G2 became the new Transferor. That is, G2 is the person who is exactly one generation above the beneficiary who is the most senior generation (i.e., G2 is one generation above G3 (the most senior generation)). (Note: With G2 as the transferor, G3 is a non-skip person, so the trust is once again not a skip trust (i.e., it is a non-skip trust)! YES, G2 became the Transferor, even though G2 died!

Definitions – Taxable Termination

Example 19: (This is **Example 16** taken to the next level)

Facts of Example 16 (again):

- G1, is G2's parent, G3's Grandparent, and G4's great grand parent
- T, a trust is created for the benefit of all of G1's descendants
- G1, G2, G3 and G4 are all alive (at the time of the contribution).
- G1 makes a transfer into T of \$1,000,000

Additional Facts:

- G3 (not G2) dies X number of years later (it is irrelevant how many years later).
- Result at time of gift – this **was not** a generation-skipping transfer.
- Result at time of G3's death – this **is also NOT** a generation-skipping transfer. Because G2 (the only non-skip person, is still alive)

Definitions – Taxable Termination

Example 20: (This is **Example 18** taken to the next level)

Facts of **Example 18:**

- G1, is G2's parent, G3's Grandparent, and G4's great grand parent
- T, a trust is created for the benefit of all of G1's descendants
- G1, G2, G3 and G4 are all alive (at the time of contribution).
- G1 makes a transfer into T of \$1,000,000
- G2 dies X number of years later.

Additional Facts:

- G3 dies a number of year After G2 dies (it is irrelevant how many years later).
- Result at time of gift – this **was not** a Generation-Skipping Transfer.

Result at time of G2's death – this was a Generation-Skipping Transfer. This is a “Taxable Termination”!

- Result at the time of G3's death: This is **also** a Generation-Skipping Transfer. This is also a “Taxable Termination”!

Definitions – Taxable Termination

The Four Concepts (Again)

1. T was not a skip trust, because at G2's death, with the New Transferor Rule, G1 was no longer the Transferor, and G2 was the New Transferor. Thus, G3, relative to G2 was a Non-skip Person, thus, the trust was a Non-Skip Trust.
2. G3, the decedent, was the only Non-Skip Person; thus, at the instant of G3's death (immediately after G3's death) there were only Skip-Persons (i.e., G4).
3. T, the trust, did not terminate after G2's death or at G3's death, it simply continued (for G4).
4. As a result of G3's death, the New Transferor Rule applies **AGAIN**, thus, G3 becomes the New Transferor. That is, G3 is the person who is exactly one generation above the beneficiary who is the most senior generation (i.e., G4 is one generation above G4 (the most senior generation)). (Note: With G3 as the transferor, G4, and now the trust becomes a non-skip-trust again.

Definitions – Taxable Termination Transition to Taxable Distributions

The NEW TRANSFEROR RULE is important, more so for “Taxable Distributions” than for “Taxable Terminations” ...

Let’s now transition to Taxable DISTRIBUTIONS

Definitions – POP QUIZ

What are the THREE (3) Types of Generation-Skipping Transfers (i.e., GSTs)?

- 1.
- 2.
- 3.

Definitions – POP QUIZ

What are the THREE (3) Types of Generation-Skipping Transfers (i.e., GSTs)?

Answers

1. Direct Skip
2. Taxable Distribution
3. Taxable Termination

Definitions – POP QUIZ

What type of GST Happens at the time of Contribution?

1.

What types of GSTs happen at the time of Distributions?

2.

3.

Definitions – POP QUIZ

What type of GST Happens at the time of Contribution?

1. Direct Skip

What types of GSTs happen at the time of Distributions?

1. Taxable Termination
2. Taxable Distribution

Definitions – Taxable Distribution

Taxable Distribution: It is a **non-liquidating distribution** from a trust that is Non-Skip Trust (i.e., a trust that is not a Skip Trust), to a Skip Person.

2 Things

- Thing 1: Trust must be a Non-Skip Person (or a Non-Skip Trust)
- Thing 2: The distribution FROM the Non-Skip Trust must be made to a person who is a Skip Person, relative to the Transferor.

Definitions – Taxable Distribution

Example 21:

Revisiting Example 16 again!

• Facts:

- G1, is G2's parent, G3's Grandparent, and G4's great grand parent
- T, a trust is created for the benefit of all of G1's descendants
- G1, G2, G3 and G4 are all alive (at the time of the contribution).
- G1 makes a transfer into T of \$1,000,000

Result:

The transfer is NOT a direct skip.

Reason:

T, a trust, is **not** a Skip Trust, because G2 (one of the trust's beneficiaries) is not a Skip Person, because G2 is **not** two (2) or more generations below G1. Thus, because NOT all the beneficiaries are Skip Persons, T is NOT a Skip Trust (i.e., it is a NON-SKIP Trust; therefore, T is not a Skip Person, and there is no Direct Skip, and there is no "Generation-Skipping Transfer" that occurred at contribution.

Definitions – Taxable Distribution

Example 21:

Revisiting Example 16 again!

- Additional Facts:

- G1 dies

Result:

No impact. It is irrelevant if G1 dies, even in death, G1 stays the transferor until a taxable termination occurs.

Remember, the death of the settlor is not relevant, it is the death of a beneficiary that MAY be relevant ...

Definitions – Taxable Distribution

Example 22:

Example 21's facts and More Additional Facts:

- G1 dies
- There is a distribution of some of the income to G2 (i.e., the trust does not terminate as a result of the termination)

Result:

No impact as to G1.

No impact as to G2. The distribution to G2, who is a Non-Skip Person, is **not** a Taxable Distribution. Recall – A Taxable Distribution is a distribution **TO** a Skip-Person **FROM** a Non-Skip Trust.

Definitions – Taxable Distribution

Example 23: –

Same facts as **Example 21** and Even More Additional Facts:

- G1 dies
- There is a distribution of some income to G2 (i.e., the trust does not terminate as a result of the termination)
- **And ... there is also a distribution of the remaining income to G3 (i.e., the trust does not terminate as a result of the distribution)**

Result:

G1 - No impact.

G2 – No impact. The distribution to G2, who is a Non-Sip person, is not a Taxable Distribution.

G3 – Taxable Distribution. WHY? Because G3 is a Skip Person (i.e., G3 is two or more generation below G1 (i.e., the Transferor), and the transfer to G2 was made from a Non-Skip Trust.

Definitions – Taxable Distributions

Example 24: (This is Example 18 (which is based on Example 16) taken to the next level)

Facts of Example 18 (revisited):

- G1, is G2's parent, G3's Grandparent, and G4's great grand parent
- T, a trust is created for the benefit of all of G1's descendants
- G1, G2, G3 and G4 are all alive (at the time of the contribution).
- G1 makes a transfer into T of \$1,000,000
- G2 dies X number of years later (it is irrelevant how many years later).
- Result at time of gift – this **was not** a Generation-Skipping Transfer.
- Result at time of G2's death – this **was** a Generation-Skipping Transfer, because at the time of G2's death, G2 was the only Non-Skip Person.

Definitions –

Example 24 (continued): (This is Example 18 (which is based on Example 16) taken to the next level)

Additional Facts.

- After G2's death, the trustee of T distributed all of the income to G3.

Result

- At G2's death, recall as a result of the New Transferor Rule, G2 became the New Transferor. Thus, at that point in time, G3 shifted from being a Skip-Person (relative to G1 who was the original Transferor) to a Non-Skip Person as to G2 (the New Transferor).
- Thus, a distribution to G3 (who is NOW a Non-Skip Person) is **not** a Taxable Distribution (or a direct skip or a taxable termination). It is not a 'generation-skipping transfer'.

Definitions – Taxable Distributions

Example 25: Same facts as Example 24, and the Trustee of T distributes some principal to G4

- In this case, G4, is a Skip Person (relative to the New Transferor ... (i.e., G2). Thus, a distribution (which does not liquidate the trust), is a Generation-Skipping Transfer, which is a Taxable Distribution.

Summary

N f a		N w f t	W a
o o n		e i o e	e d
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w o c	n e p n e a m a t n n s s s s d e e e e n	o s	l l i e i s , y p r e p n i u s
e w o s	r p s c b i b r s s o o t t e n a l , s t	l w :	E u i l s t m o l e r p s t n s t
i n f a i f t l n l i f f n n , , c t r a f i	e i x s c l	e i x s c l	s h p t w u e a i f o i e .
k n c e t n e e a e b e e , , e t a e m	a n e i a	a n e i a	: e o h h t i t n e s s
n g e r i g r s t u r r n a r o e n r e r g	m o b a	m o b a	s e a h e s i g r r t
o p , o s k i t o e n s o s u l d d o	n p n l l	n p n l l	G e t a o , e r i
w t t - p n o , , n i - d e p n w	t e s	t e s	S d G v w a n a a n
e s s s n - p s , e e r e t	i R s	i R s	T , S f e h - a d t
t r : ; , s s s k r w u	o a R O	o a R O	T o e n i a
h m , k k i 3 s l e ; i t	h n t a	h n t a	t w r t n d t v
e s i i p 7 o e	o e	o e	a h m o h e
pp n .			x o s e

Summary

OOPS!

Summary

Now we know the following terms and concepts:

- Person
- Transfer
- generation-skipping transfer
- direct skips
- taxable terminations
- taxable distributions
- transferor
- transferee
- skip person
- non-skip person
- skip trust
- non-skip trust
- predeceased parent rule
- 37 ½ year old unrelated person rule
- new transferor rule

Next time we will address the following terms:

- GST Exemption
- Inclusion Ratio
- Applicable Rate

We will also address:

- How to allocate the GST exemption
- How and when the GST tax is imposed
- Who pays the GST Tax
- What forms do you have to complete when there is a generation-skipping transfer or a possibility of a generation-skipping transfer (there are 5 forms), and
- how to read the GST administrative clauses in a trust

Summary

In the following session, we will address some of the more nuanced issues with the GST Tax:

- Filing Requirements on Gift and Estate Tax Returns
- Automatic allocation rules
- Opting in and Opting Out of GST allocation
- The ETIP Period
- Late Allocations
- Reporting allocations on the gift (Form 709) and estate (Form 706) tax returns
- Some planning thoughts on when to, and not to, use the GST Exemption

Lester's Bio

- Founding co-member of Franklin Karibjanian & Law PLLC
- Member of the Florida and DC Bars; Board Certified in Wills Trust and Estates by the Florida Bar
- ACTEC Fellow
- Adjunct Professor at University of Miami School of Law Graduate Estate Planning School (8th year)
- Lecturer at the Florida Banker's Wealth Management Trust School (15th + years)
- Lectured at numerous national conferences, including the Heckerling Institute, the Notre Dame Institute, the Southern Federal Tax Institute, the Hawaii Tax Institute, the Montana Tax Institute, and dozens of estate planning councils and various state bar association conferences.
- Former co-chair of the Income and Transfer Tax Planning Group for the American Bar Association's Real Property Trust and Estate Law Section. Former chair of numerous committees under that group. Former chair of various committees in the Real Property Probate and Trust Law Section of the Florida Bar.
- Written numerous articles for the Florida Bar Journal, Bloomberg, Estate Planning, Probate and Property, LISI, and many other periodicals. Quoted in numerous media, including the Wall Street Journal, BNA Bloomberg, and other national, state and local news media.
- Retired CPA. Before law school, was an associate at Price Waterhouse (fka PriceWaterhouseCoopers).
- Graduated with an LL.M. (1st in class) at the University of Florida, with a JD at The University of North Carolina School of Law, with a MST at the University of Miami, and with a BBA (accounting) at Florida International University.
- Lives in Naples Florida (and works in both Naples and DC). Husband to his loving wife Janet, father to his wonderful son, Jordan, and caterer to Leo (the furry feline (aka ginger tabby)). Enjoys golf, but is not very good at it 😊!

GST Exemption

OOPS!

Thank you!

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