

Proposed “For the 99.5% Act” Could Bring Significant Changes to Existing Federal Estate, Gift and Trust Tax Rules

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The recent introduction of Senator Bernie Sanders’s proposed tax reform bill, the “For the 99.5% Act,” brings the possibility of unprecedented changes to the tax and estate planning landscape by reducing existing federal estate and gift tax exemptions, increasing estate tax rates, limiting lifetime transfer strategies, and imposing new rules and regulations on certain types of commonly used trusts.

Although the outcome of this proposed legislation remains unknown, taxpayers who might be impacted by the bill’s enactment can consider making preemptive changes to their estate planning strategy to forestall potential changes in the law.

Presently, the federal estate and gift tax exemption is set at \$11.7 million per individual and \$23.4 million per married couple. Each individual may apply this exemption to gifts made during the taxpayer’s lifetime or to transfers made at the taxpayer’s death. The exemption may also be applied partially to lifetime transfers and the remainder to transfers at death.

The “For the 99.5% Act” proposes the following changes, which if enacted would likely take effect at the end of 2021:

- The federal gift tax exemption amount would be reduced to \$1 million per individual, and the federal estate tax exemption would be reduced to \$3.5 million per individual (\$7 million for married couples).
- There would be an increase in the progressive estate tax rates for estates exceeding \$3.5 million. Estates in the \$3.5 million to \$10 million range would be taxed at a rate of 45%. Estates in the \$10 million to \$50 million range would be taxed at a rate of 50%. Estates in the \$50 million to \$1 billion range would be taxed at a rate of 55%. Estates exceeding \$1 billion would be taxed at a rate of 65%.
- Tax exempt annual gifting would be limited with respect to certain transfers, including transfers to trusts and to certain family entities.
- Valuation discounts on the transfer of certain assets – such as the transfer of an interest in a business entity holding non-business assets such as cash and marketable securities not actively used in the conduct of a trade or business – would be curtailed.
- Grantor trusts, which have commonly been employed for their favorable income tax and estate tax treatment, would be limited in their effectiveness. Under the proposed legislation, the assets held in a

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grantor trust would be considered owned by the grantor for estate tax purposes and taxable in the grantor's estate upon the grantor's death. Additionally, any distribution from a grantor trust to a beneficiary would be subject to gift tax.

- Grantor Retained Annuity Trusts (GRATs), a longstanding vehicle for highly favorable lifetime transfers, would also face new restrictions. Under the proposed legislation, GRATs would be required to run for a minimum 10-year term and would be required to leave a remainder interest having a minimum value of \$500,000 or 25% of the fair market value of the trust assets, whichever is greater.

It is important to note that the provisions of the "For the 99.5% Act," if enacted as currently proposed, would not apply to trusts and transfers created prior to enactment. It may therefore be prudent for high-net-worth individuals to consider proactive next steps to address these potential limitations before they become law.

The author of this Alert, **Karen A. Evans**, and the members of our **Tax, Trusts & Estates Department** listed below, are available to answer your questions and provide guidance concerning your current estate and tax planning strategies.

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