

# Private Clients Update: House Passes Build Back Better Act and IRS Announces 2022 Inflation Adjustments

*November 23, 2021*

After months of negotiation, the House passed the Build Back Better Act (the “Act”) on Friday, and the House bill will now move to the Senate. Separately, the Internal Revenue Service has released inflation adjustments for 2022. Below is a summary of certain changes that were made in the Act since our last alert summarizing the proposed legislation, as well as inflation adjustments and increases in exemptions that may be of interest to our clients.

## Update on House Legislation

The House bill eliminated or modified many of the provisions relating to estate planning that we summarized in our October 1, 2021 [alert memorandum](#). The bill also includes a new provision increasing the cap on the deduction for state and local taxes (the “SALT deduction”).

### *Federal gift, estate and GST tax exemptions*

The House bill does not include the earlier proposals relating to decreases in the Federal gift, estate and generation-skipping transfer (“GST”) tax exemptions. By way of reminder, under current law, these exemptions will decrease in 2026 to \$5 million, indexed for inflation from 2010.

### *Grantor trust rules and valuation discounts*

The House bill does not include the earlier proposals relating to grantor trusts or valuation discounts. Those provisions would have had far-reaching implications for estate planning. As a result (and assuming that these earlier proposals are not re-introduced and enacted), common estate planning techniques such as gifts of discount entities, GRATs, QPRTs and sales and other transactions between grantor trusts and their grantors will continue to be viable.



### **Top marginal income tax rates**

The House bill does not include the earlier proposal to increase the top marginal income tax rates on ordinary income and capital gains.

### **Income tax surcharge**

The House bill revises the earlier proposal to impose a surcharge on modified adjusted gross income (“MAGI”) over certain thresholds.

Individuals. For individuals (including married individuals who file a joint return), the surcharge would be imposed on MAGI of high income taxpayers as follows:

- MAGI over \$10 million, up to \$25 million: 5%
- MAGI over \$25 million: 8%

Trusts and estates. For trusts and estates, the surcharge would be imposed at considerably lower thresholds:

- MAGI over \$200,000, up to \$500,000: 5%
- MAGI over \$500,000: 8%

If the proposed surcharge is enacted, clients may consider strategies to reduce the taxable income of trusts and estates, such as distributions of trust or estate income to beneficiaries who are not subject to the surcharge, the creation of multiple trusts or the conversion of non-grantor trusts to grantor trusts.

### **SALT Deduction**

The House bill would increase the cap on the SALT deduction to \$80,000 for individuals (including married individuals who file joint returns) and \$40,000 for trusts and estates.

The bill now moves to the Senate, where it will likely face a number of hurdles and may be subject to significant changes, including the possible re-introduction of earlier proposals, modifications to the SALT deduction or the addition of new provisions affecting estate planning. In light of the uncertainty, clients considering lifetime gifts or other estate planning techniques prior to the end of the year should contact us before implementing any planning.

## 2022 Annual Exclusions and Gift, Estate and GST Tax Exemptions

### Annual exclusion gifts

For 2022, the annual exclusion is increasing for inflation from \$15,000 per donee to \$16,000 per donee (or \$32,000 per donee for married couples who elect to split gifts). For gifts to a non-citizen spouse, the annual exclusion is increasing from \$159,000 to \$164,000. As always, we recommend that annual exclusion gifts be made as early as possible in the calendar year.

### Federal gift, estate and GST tax exemptions

If the Federal gift, estate and GST tax exemptions are not reduced under new legislation, these exemptions will increase for inflation on January 1, 2022 from \$11.7 million to \$12.06 million.

### Connecticut gift and estate tax exemptions

The Connecticut gift and estate tax exemptions are increasing on January 1, 2022 from \$7.1 million to \$9.1 million. As a reminder, these exemptions are scheduled to match the Federal gift and estate tax exemptions as of January 1, 2023.

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If you have any questions regarding this alert memorandum or your estate plan, please contact any of the attorneys in the [Private Clients Practice Group](#).

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