



TaxNewsFlash

United States

No. 2024-166
May 3, 2024

Final regulations: Guidance on extensions to make certain exemption allocations and elections related to generation-skipping transfer tax

The U.S. Treasury Department and IRS today released [final regulations](#) (T.D. 9996) regarding the circumstances and procedures under which an extension of time will be granted under section 2642(g) to make certain exemption allocations and elections related to the generation-skipping transfer (GST) tax. The statutory provision underlying these rules was enacted as part of the “Economic Growth and Tax Relief Reconciliation Act of 2001” (EGTRRA).

The Treasury Department and IRS in April 2008 published proposed regulations (REG-147775-06) providing guidance on the application of section 2642(g) by identifying the standards that the IRS will apply in determining whether to grant a transferor or a transferor’s estate an extension of time to make an allocation of GST exemption, as described in section 2631, to property transferred by the transferor and the following three elections under section 2632: (1) an election under section 2632(b)(3) not to have the automatic allocation of GST exemption apply to a direct skip; (2) an election under section 2632(c)(5)(A)(i) not to have the automatic allocation of GST exemption apply to an indirect skip or to transfers made to a particular trust; and (3) an election under section 2632(c)(5)(A)(ii) to treat any trust as a GST trust for purposes of section 2632(c). In addition, the proposed regulations included procedural requirements for establishing eligibility for the requested relief, including identification of the various persons from whom affidavits would be required.

KPMG observation

The proposed regulations provided that relief would not be granted to revoke an election under section 2632(c)(5)—for example, an election to opt out of the automatic allocation rules or an election to opt in to the automatic allocation rules (GST Trust election). This proposed rule was criticized by the estate planning community, both because there did not seem to be a reason to exclude these situations from relief and because it prohibited relief for a fairly common mistake—when an election out of automatic allocation of GST exemption was inadvertently attached to a gift tax return but the taxpayer had intended for the trust to be exempt from GST tax (or vice versa). In the preamble to the final regulations, the Treasury Department and the IRS acknowledged that these elections are not irrevocable. As a result, the final regulations allow requests for relief to revoke such elections and indicate that relief may be granted provided the other requirements of the regulations are satisfied.

Today's final regulations finalize those proposed regulations, and although the Treasury Department and IRS state that they are mindful that the proposed regulations were issued 16 years ago, because there have been no intervening legislative or regulatory changes regarding allocations of GST exemption or GST elections and the issues addressed by the commenters on the proposed regulations continue to remain relevant, the Treasury Department and IRS have determined that a new notice of proposed rulemaking or a further opportunity for public comment would be unlikely to generate different comments and would unnecessarily delay final rules to the continued detriment of taxpayers seeking relief.

The Treasury Department and IRS also state that they are currently developing new proposed regulations that will complement the final regulations by addressing the practical effect of a grant of relief and clarifying the interplay between affirmative allocations and automatic allocations.

The final regulations are effective on May 6, 2024.

kpmg.com/socialmedia



The information contained in TaxNewsFlash is not intended to be "written advice concerning one or more Federal tax matters" subject to the requirements of section 10.37(a)(2) of Treasury Department Circular 230, as the content of this document is issued for general informational purposes only, is intended to enhance the reader's knowledge on the matters addressed therein, and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

The KPMG name and logo are trademarks used under license by the independent member firms of the KPMG global organization.

KPMG International Limited is a private English company limited by guarantee and does not provide services to clients. No member firm has any authority to obligate or bind KPMG International or any other member firm vis-à-vis third parties, nor does KPMG International have any such authority to obligate or bind any member firm.

Direct comments, including requests for subscriptions, to [Washington National Tax](#). For more information, contact KPMG's Federal Tax Legislative and Regulatory Services Group at +1 202.533.3712, 1801 K Street NW, Washington, DC 20006-1301.

To unsubscribe from TaxNewsFlash, reply to [Washington National Tax](#).

[Privacy](#) | [Legal](#)