

Proposed regs offer guidance on GST elections

Preamble to Prop Regs § 26.2632-1 ; Prop Reg § 26.2632-1

IRS has issued proposed regs that would provide guidance for making the Code Sec. 2632(c)(5)(A)(i) election to not have the Code Sec. 2632(c)(1) deemed allocation of unused generation-skipping transfer (GST) tax exemption apply for certain transfers to a GST trust. The proposed regs would also provide guidance for making the Code Sec. 2632(c)(5)(A)(ii) election to treat a trust as a GST trust.

Guidance in proposed regs. The proposed regs carry the following guidance:

- The election out of the automatic allocation rules for indirect skips and the election to treat any trust as a GST trust would be made on a timely filed federal gift tax return. (Prop Reg § 26.2632-1(b)(2) ; Prop Reg § 26.2632-1(b)(3))
- A transferor who wants to elect out of the automatic allocation rules for indirect skips would have the option of electing out for the specific transfer to the GST trust, or making a single election for the trust that would apply to the current transfer and all subsequent transfers made by that transferor to the trust. Under the second option, once the election is made for a trust, the election would remain effective for all subsequent transfers to that trust by the electing transferor, until that transferor's election is terminated. (Prop Reg § 26.2632-1(b)(2))

IRS indicated that if under the terms of the trust instrument distributions to skip persons are unlikely, the transferor would be able to choose not to allocate the GST exemption to the trust. IRS also noted that this rule was intended to alleviate the need to repeatedly file a gift tax return to elect out of the automatic allocation rules for transfers that would not otherwise require a federal gift tax return to be filed. Thus, once the transferor would elect out of the automatic allocation rule for indirect skips with regard to any or all transfers made by that transferor to the trust, the election out, until terminated, would remain effective for all subsequent transfers made by that transferor to the trust, without any further reporting requirement for the transferor. IRS said that a similar rule would apply for the election to treat a trust as a GST trust.

Effective date. The proposed regs would be applicable for elections made on or after the date they are finalized. However, any Code Sec. 2632(c)(5)(A) election made before that date would be recognized if the election is made on a timely filed gift tax return. (Prop Reg § 26.2632-1(e))

RIA Research References: For the GST tax, see Federal Tax Coordinator 2d ¶ R-9500; United States Tax Reporter Estate & Gift ¶ 26,014; TaxDesk ¶ 791,000; TG ¶ 41900.