SOUTH BAY ESTATE PLANNING COUNCIL

Tax Compliance in the Shadows of That Other Transfer Tax

GST Return Requirements for the Wealth Planning Professional

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Roadmap

1. A quick history
2. The three taxable events
3. Returns and due dates
4. Exemption and the ETIP
5. Pitfalls and a “simple” hypo

A Quick History

- **1976** First GST tax
- **1986** Repealed and replaced; $1M exemption
- **2001** Exemption tied to estate tax
- **2012** $5M, indexed, permanent
- **2017** Doubled through 2025
- **2026** $15M, indexed, no sunset

A Second Tax

- On top of gift or estate tax
- Flat 40% × inclusion ratio
- Its own exemption: $15M (2026)
- Not portable between spouses

The Gap It Closes

Outright bequests · 3 taxes



Life-income trust, no GST tax · 1 tax



Same trust, with GST tax · 3 taxes



Who Is a Skip Person?

- **Family:** 2+ generations down
- **Unrelated:** 37½+ years younger
- **Trust:** only skip persons hold present interests
- **Predeceased parent:** moves up

§2612(C)

Direct Skip

- Straight to a skip person
- Tax-exclusive: only on what is received
- **Gift:** $1M + **$400K** GST, itself a gift (§2515)
- **Bequest:** $1M bearing tax → **$285,714**
- 709 (life) · 706 (death)

§2612(B)

Taxable Distribution

- Trust pays a skip person
- $100K at 40% → **$40K tax**
- Distributee pays; tax-inclusive
- 706-GS(D-1) and 706-GS(D)

§2612(A)

Taxable Termination

- Interest ends; only skip persons remain
- $5M trust → **$2M tax**
- Trustee pays; tax-inclusive
- Form 706-GS(T)

TREAS. REG. § 26.2662-1

Who Files What

- Direct skip, life → **709**
- Direct skip, death → **706, Sch. R**
- Direct skip from a trust → **Sch. R-1** *(not if executor is also trustee)*
- *e.g., QTIP Trust, Revocable Trust → grandkids at death*
- Distribution → **706-GS(D-1), 706-GS(D)**
- Termination → **706-GS(T)**

TREAS. REG. § 26.2662-1(D)

When They’re Due

- **709** → April 15
- **706** → 9 months *(automatic extension: Form 4768)*
- **706-GS(D-1)** → April 15 *(no extension)*
- **706-GS(D), 706-GS(T)** → April 15 *(Form 7004)*
- **Sch. R-1** → 2 months after 706 due date *(paid after 9 months but within the extension: interest, no penalties)*

§§2641–2642

The Rate Math

- Rate = 40% × inclusion ratio
- Ratio = 1 – exemption ÷ value
- Full exemption → **0%**
- Half → **20%** · None → **40%**

TREAS. REG. § 26.2642-5

When the Ratio Is Final

- **Direct skip:** no more tax assessable
- **Trusts:** the later of
- (1) First GST return using the ratio
- (2) Transferor’s estate tax period
- No return → never final

Zero Tax Still Means File

- The 0% comes from an allocation: **709** or **706**
- **Timely** allocation: value at transfer
- **Late** allocation: allowed, at current value
- Trustee files **706-GS(D-1)** or **706-GS(T)** even at 0%
- That return starts the finality clock
- No return, no statute

§2632 · FORM 709

Allocating During Life

- **Automatic:** direct skips
- **Automatic:** GST trusts (elect in/out)
- **Timely 709:** gift-date value
- **Late 709:** current value
- **Retroactive:** out-of-order death
- **Relief:** §2642(g) *(Reg. §26.2642-7; substantial compliance)*

FORM 706 · SCHEDULE R

Allocating at Death

- Executor allocates on the 706
- Leftover is deemed allocated
- Reverse QTIP saves exemption
- Severance: split 0 and 1 trusts

§2642(F) · REG. § 26.2632-1(C)

The ETIP

- In donor’s estate if donor died today
- Allocation waits for the close
- Value measured at the close
- Ends: death, no inclusion, or a GST
- GRATs, QPRTs, retained interests

Common Pitfalls

- No 709 for trust gifts
- Silent automatic allocation
- Assuming GST portability
- Missing the timely ETIP return
- Skipping the unrelated-age test
- No D-1 copy to distributees

A “Simple” Hypo

- D, age 60 → $1M trust
- Income to A (20, unrelated) for life
- Then reverts to D
- $50K income paid to A

HYPO

The Transfer

- A: skip person (40 years younger)
- Trust: skip person → **direct skip**
- 709 required
- Reversion in D’s estate → **ETIP**
- Direct skip deferred to ETIP close

HYPO

The $50,000 to A

- **Taxable distribution**
- Ends the ETIP for the $50K only
- No allocation → **$20K tax**
- 706-GS(D-1) and 706-GS(D)

REG. § 26.2642-1(B)(2)

The Fix?

- Allocate **$1,050,000** on a timely 709
- Numerator = GST exemption allocated
- Denominator = whole trust
- Inclusion ratio = **0**
- Repeat for each distribution
- More at D’s death if trust grows
- **Very inefficient** use of exemption

Five Takeaways

1. Find the skip persons *(unrelated: 37½+ years)*
2. Match each event to its return
3. File even at zero tax: it starts finality
4. Allocate on purpose: timely, late, or relief
5. Spot ETIPs; plan for when one closes

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