

Estate Planning in 2020

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In December 2017, President Trump signed the Tax Cuts and Jobs Act ("TCJA") into law. As a result, the lifetime gifting and estate tax exemption ("Estate Tax Exemption"), as well as the generation-skipping transfer tax exemption ("GST Exemption"), increased to \$11,180,000 for 2018, and is indexed for inflation through December 31, 2025.

The Estate Tax Exemption and GST Exemption for 2020 is \$11,580,000 (\$23,160,000 for married couples). The current tax rate for transfers above the Estate Tax Exemption and GST Exemption is 40%.

Unless additional legislative action is taken, on January 1, 2026, the Estate Tax Exemption and GST Exemption will each revert back to pre-TJCA levels (the Estate Tax Exemption and GST Exemption amounts for tax year 2017, the last year before the TCJA became law, was \$5,490,000).

POTENTIAL CHANGES IN LAW

Of course, the current law under the TCJA could change prior to January 1, 2026 as a result of Congressional action. It is also possible that a change in administration in the 2020 Presidential Election could speed up this process.

The expected challenger to President Trump, former Vice President Joe Biden, has not released a detailed transfer tax plan; however, it is possible that new law could be proposed that (i) expedites the return of the Estate Tax Exemption and GST Exemption amounts to pre-TCJA levels **before 2026** and/or raises the estate tax rate and (ii) eliminates and/or significantly reduces the benefit of the current "step-up" in income tax basis that beneficiaries of inheritances receive under current tax laws. The Biden-Sanders Unity Task Force Recommendations stated that "Estate taxes should also be raised back to the historical norm."

ECONOMIC OUTLOOK

COVID-19 has had an impact on financial markets and the overall economy, which may provide estate planning opportunities. Each month, the Internal Revenue Service publishes the applicable federal rates ("AFRs"), which are the minimum interest rates that taxpayers must charge on private loans (including, for example, loans from a taxpayer to a trust created by the taxpayer). For September 2020, the AFRs are significantly lower than in prior months and years. For example, the September 2020 Mid-Term AFR (defined as a loan with a term of between three and nine years) is **0.35%**. For contrast, the mid-term AFR in September of 2018 was **2.86%**.

Additionally, there has been a decline in values of certain sectors of publically traded securities and privately-held assets, giving taxpayers the flexibility to benefit from such depressed values.

SHOULD I ACT NOW?

While it is unclear what legislative action will occur after the 2020 Presidential Election, it is clear that, if you wish to use your Estate Tax Exemption and GST Exemption during your lifetime, the enhanced Estate Tax Exemption and GST Exemption, coupled with historically low interest rates and potentially depressed asset valuation, creates a favorable environment for gift and generational planning.

POTENTIAL AVENUES FOR GIFTING:

1. Outright Gifts to Individuals
2. Gifts to Existing Trusts
3. Creation of and Gifts to a Spousal Lifetime Access Trust ("SLAT")
4. Creation of and Gifts to a Dynasty (Multi-Generational Trust) for Children and More Remote Lineal Descendants
5. Sale to a Defective Grantor Trust ("DGT")
6. Grantor Retained Annuity Trust ("GRAT")
7. Charitable Lead Annuity Trust ("CLAT")

If you would like more information or would like to review your estate plan, please contact one of the attorneys in the Dallas Estates and Trusts Practice Area of Foley and Lardner to schedule an appointment:

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Our attorneys are available to give you the legal advice you are accustomed to, even in this time of uncertainty due to COVID-19.