

## ELECTION 2020: ESTATE PLANNING OPPORTUNITIES

In 2018, as part of the Tax Cuts & Jobs Act, the gift and estate tax exemption doubled to historic levels – from \$5.6 million to \$11.2 million. After indexing for inflation, **this year the exemption is \$11.58 million**, \$23.16 million for a married couple, and it is currently scheduled to remain at this level through 2025.

Whether it's due to the \$4 trillion of COVID-19-fueled fiscal challenges, or a Blue Wave in November that will give Biden the power to pass sweeping tax reform, **many high net worth individuals are cautious that a reduction in the exemption could be coming sooner than 2025** resulting in significant estate tax exposure for their family. See the chart below for a comparison of the major tax policy differences between the two candidates:

### Personal Wealth and Estate Tax Comparison

	Current Law	Biden	Trump
Estate Tax	<ul style="list-style-type: none"> <li>Exemption: \$11.58M</li> <li>Basis step-up at death</li> </ul>	<ul style="list-style-type: none"> <li>Exemption lowered to pre-TCJA levels</li> <li>Repeal step-up in basis at death</li> </ul>	Same as current law
Gift Tax	Current exemption: \$11.58M	Exemption lowered to pre-TCJA levels	Same as current law
Transfer Tax Rate	Current top rate: 40%	Top rate to 45%	Same as current law

The **estate tax exemption** is the amount that you can give your heirs during your lifetime, or at death, free from transfer taxes.

Any assets above the estate tax exemption are currently subject to a 40% "inheritance" tax.

As we head into year end, one of the most pressing questions is: **What are some actionable steps that you can take today given this uncertainty?** For some, no significant action is needed this year. For others, we are recommending 2020 gifts of the full exemption (\$11.58 million per person).

We encourage our clients to keep *flexibility* in their estate plans. Assuming you have not previously used your gift and estate tax exemption, here are a few ideas at varying net worth levels\*:

### If your Net Worth is...

#### Below \$7 million

- No immediate action needed as the proposed lowering of the exemption to \$3.5 million per person under the Biden plan still would not trigger any gift or estate taxes
- Annual exclusion gifts** are generally encouraged, to the extent that you have sufficient cash flow and assets to transfer. As a reminder, in 2020 you can make annual exclusion gifts of \$15,000 per person free of any gift and estate taxes.

#### Between \$7 million and \$11 million

- Annual exclusion gifts
- Consider larger gifts to use *some of one spouse's* lifetime exemption
- Update your estate plan to **establish trusts** or other vehicles that can be funded with gifts quickly depending on the outcome of the election and potential tax law changes
- If you are a **business owner**, or own other illiquid assets, consider taking advantage of **discounts** available by making gifts of ownership in the business to the next generation
- Review your **long-term charitable plans** and the assets best suited to accomplish your philanthropic goals

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### If your Net Worth is...

#### Between \$7 million and \$11 million (continued)

- Consider strategies to **freeze the current value of your estate**, and ensure future appreciation is outside of your estate, such as Grantor Retained Annuity Trusts (GRATs) and sales to Intentionally Defective Grantor Trusts (IDGTs). Both strategies work very well when interest rates are low.
- Outright gifting is also an option, but we find that many clients prefer making larger gifts through trusts for their asset protection benefits

#### Between \$11 million and \$23 million

- Consider larger gifts to use *all of one spouse's* unified credit
- A **Spousal Lifetime Access Trust** (SLAT) may be a good vehicle to lock-in gifts to remove an extra \$5 million or more from your estate, while still providing some flexibility to access the assets during your and your spouse's lifetimes
- For those ready to transfer assets to the next generation, gifts to **Intentionally Defective Grantor Trusts** (IDGTs) can provide for income and estate tax efficient long-term wealth transfer
- **Estate freezing** is very important to not further compound potential estate tax liabilities and ensure future growth happens outside of your estate
- All strategies previously mentioned above also apply at this level

#### \$23 million and above

- **Consider larger gifts to use all of one spouse's unified credit** plus *all or some of the second spouse's credit* depending on personal goals for retirement, philanthropy, and lifestyle needs
- This could be a **combination of several strategies** previously mentioned, including establishing a SLAT, outright gifts to the next generation through IDGTs, and ongoing "rolling" GRATs
- If a portion of your estate is a **family-owned business or large real estate holding**, given some of the financial challenges of 2020 this could be an optimal year to transfer those assets at a significantly discounted value
- We recommend allocating your GST (**Generation Skipping Transfer**) exemption to certain gifts as well to avoid assets gifted from being included in the recipient's estate at their death

We recognize that each family has their own unique set of circumstances, goals, and objectives for the wealth that they have accumulated. There is no "one-size fits all" solution for all families, nor is estate planning a one-time event.

If we can answer any questions that you have or assist your estate planning attorney with designing the best solution for your family, please let us know.

For example, assume John and Anne have a combined net worth of \$30 million.

- ☑ If both John and Anne died this year this would result in approximately **\$2.7 million in estate taxes** paid by their heirs (\$30 million - \$23.2 million exemption x 40% tax = \$2.7 million estate tax)
- ☑ If they do no planning this year, and the exemption reverts to \$3.5 million per person with 45% transfer tax, and John and Anne die in 2021 this would result in approximately **\$10.3 million in estate taxes** (\$30 million - \$7 million exemption x 45% tax = \$10.3 million estate tax), a 300%+ increase
- ☑ If John and Anne fund trusts in 2020 using both lifetime exemptions for a total of \$23.2 million transferred out of their estate, and they both die in 2021 this would result in approximately **\$3.1 million in estate taxes** (\$6.8 million - \$0 exemption remaining x 45% tax = \$3.1 million estate tax)

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