

ALERT MEMORANDUM

# 2020 Estate Planning Update

December 20, 2019

This memorandum provides an update regarding certain tax and trust law changes of interest to individual clients, as well as related planning opportunities that clients may wish to consider.

## Overview

- The federal gift, generation-skipping transfer (“GST”) and estate tax exemptions are increasing to \$11.58 million in 2020.
- The annual exclusion will remain at \$15,000 per donee.
- Because interest rates remain low, clients may wish to take advantage of estate planning techniques that are effective in a low-interest rate environment.
- Connecticut has adopted a new trust code, permitting Asset Protection Trusts and Dynasty Trusts in Connecticut.

## Federal developments

### *Gift, estate and GST exemptions*

For 2020, the federal gift, estate and GST tax exemptions are \$11.58 million per individual (increased from \$11.4 million in 2019) or \$23.16 million for a married couple. Taxable gifts in excess of the gift tax exemption are taxed at a flat rate of 40%. Under current law, the exemptions will revert in 2026 to prior levels (\$5 million, indexed for inflation from 2010 to 2026).

Although, under current law, clients have approximately six years to take advantage of the temporary increase in the federal gift and GST tax exemptions, many clients may wish to accelerate gift plans for a number of reasons.

- Early use of the exemptions permits any future appreciation on the gifted property to be transferred to lower generations without a gift or estate tax on the appreciation.
- It is possible that Congress will enact legislation to reduce the exemptions prior to 2026, and some techniques involve multiple years to implement. It is also possible that Congress will increase the gift

If you have any questions concerning this memorandum, please reach out to your regular firm contact or the following members of the [Private Clients group](#).

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tax rate, in which case a taxable gift in excess of the current gift tax exemption may be attractive for some clients in order to lock in the 40% gift tax rate.

- New York clients are subject to a three-year “clawback” that imposes a New York estate tax on certain taxable gifts made within three years of death if death occurs prior to 2026. An early gift would begin the running of the three years. Because there may be a tax cost associated with the clawback, some New York clients may not wish to make taxable gifts.
- Connecticut clients may consider postponing or staging taxable gifts in light of the scheduled increases in the Connecticut gift tax exemption.

The increase in the federal gift and GST exemptions to \$23.16 million for a married couple creates both opportunities and complexities for clients. Many clients who wish to utilize the exemptions before the scheduled reversion to prior levels will want to consider multiple issues, including their personal liquidity and potential need for access to the property given away. We discuss a number of techniques that may be of interest to clients, including the use of so-called “spousal lifetime access trusts” (or “SLATs”) and “qualified personal residence trusts” (or “QPRTs”), in Section III of our 2018 memorandum [Overview of Lifetime Gift and GST Tax Planning](#) (the “[2018 Memorandum](#)”). The appropriate strategy for each client will differ depending on personal and financial circumstances. We encourage clients who are interested in pursuing a gift plan to discuss with us the planning techniques that may best achieve their goals.

### ***Annual exclusion***

For 2020, the annual exclusion amount will remain at \$15,000 per donee (or \$30,000 per donee for married couples who elect to split gifts). For gifts to a non-citizen spouse, the annual exclusion increased to \$157,000 (from \$155,000 in 2019). As always, we recommend that annual exclusion gifts be made as early as possible in the calendar year.

By way of reminder, payments of certain qualified education and medical expenses, including tuition payments and health insurance premiums, also qualify as tax-free gifts if made directly to the provider.

### ***Current interest rates***

Interest rates remain relatively low. The lowest rates for intra-family loans for December 2019 are 1.61% (for loans up to 3 years), 1.69% (for loans greater than 3 years and up to 9 years) and 2.09% (for loans of 9 years or more). The interest rate for valuing annuities and other donor-retained interests, such as those used for GRATs, CLATs and QPRTs, is 2% in December 2019. For a more detailed discussion of these estate planning techniques, see Section V of our [2018 Memorandum](#).

## **State developments**

### **New York**

#### ***Estate tax rate and exemption***

For 2020, the New York estate tax exemption is \$5.85 million (increased from \$5.74 million in 2019). New York currently imposes an estate tax on estates with a value in excess of the exemption at a top marginal rate of 16%. (Because the state estate tax is deductible against the federal estate tax, the effective rate of a 16% estate tax, when federal estate tax is also imposed, is 9.6%.)

### **Connecticut**

#### ***Gift and estate tax rates and exemptions***

For 2020, the Connecticut gift and estate tax exemptions are \$5.1 million per individual (increased from \$3.6 million in 2019), or \$10.2 million for married couples. The Connecticut exemptions are scheduled to increase to \$7.1 million in 2021 and to \$9.1 million in 2022. In 2023 and beyond, the Connecticut exemptions will equal the federal exemptions. The top marginal Connecticut gift and estate tax rates remain at 12% (with an effective rate of 7.2% when the federal estate tax deduction for state

estate taxes is taken into account), and the maximum amount an individual may be liable for in combined Connecticut gift and estate tax is capped at \$15,000,000.

We recommend that Connecticut residents who wish to make a taxable gift in excess of their available Connecticut gift tax exemption contact us to determine whether it would be appropriate to postpone the gift. In addition, clients should note that the amount of their remaining Connecticut gift tax exemption may be reduced if a Connecticut gift tax was paid in prior years.

### ***Adoption of new trust code***

Connecticut has adopted a new trust code, effective as of January 1, 2020, that makes significant changes to Connecticut's trust law. These changes provide significant planning opportunities for Connecticut residents and for nonresidents of Connecticut who are interested in taking advantage of the new law through the creation of Connecticut trusts.

- The legislation includes provisions for "directed" trusts, so that the donor may divide certain trust responsibilities, such as investments and the authority to direct distributions, among different individuals or entities who are not acting as Trustees.
- "Asset Protection Trusts" are now permitted in Connecticut. Under a properly structured Asset Protection Trust, certain creditors of the donor may not reach trust assets even though the donor is a permissible beneficiary of the trust.
- For trusts created on or after January 1, 2020 (or that become irrevocable on or after January 1, 2020), Connecticut has extended its rule against perpetuities, which controls the duration of a trust, to 800 years, making so-called "dynasty trusts" available to Connecticut residents and others who wish to establish a trust governed by Connecticut law.
- For trusts created on or after January 1, 2020, the Connecticut legislation requires notice of

the existence of the trust and annual reports to be given to certain beneficiaries, or, if permitted under the terms of the trust, to a designated representative.

In light of these Connecticut trust law changes, we recommend that Connecticut clients contact us to review their estate plans.

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