

Use It or Lose It: Loss of Gift Planning Opportunities May Be Imminent

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With control of both the White House and Congress in Democratic hands, legislation is expected to result in significant changes to the gift, estate and generation-skipping transfer (“GST”) tax regime. We are writing to alert our clients that the window of opportunity to make gifts and to implement certain planning strategies may be closing.

Exemptions could be reduced and popular techniques may be curtailed.

Currently, the exemptions from the gift, estate and GST taxes are \$11.7 million (\$23.4 million for a married couple). These exemptions could be substantially reduced – the gift tax exemption to as low as \$1 million and the estate and GST tax exemptions to as low as \$3.5 million. Legislation may also increase the gift, estate and GST tax rates. Further, popular estate planning techniques could be eliminated or curtailed, including discount planning with family limited partnerships and LLCs and the use of grantor retained annuity trusts (“GRATs”) and grantor trusts. For a discussion of these techniques and lifetime giving in general, see our 2018 Alert Memorandum.

Opportunities to consider now.

The combination of potential changes in the tax laws and historically low interest rates make this an opportune time (indeed, perhaps a final opportunity) to engage in meaningful lifetime gift planning. We recommend that clients who have not already used their full gift and GST tax exemptions contact us to discuss their gift planning. Those who utilized their full exemptions in 2020 may wish to top off their gifts with the 2021 inflation adjustment of \$120,000 (\$240,000 for a married couple). Clients should also consider establishing GRATs, making gifts of family limited partnerships or other discount entities and selling assets to a grantor trust in exchange for a note.



When will the tax laws change?

Because there is a risk that legislation could be effective as of the date of announcement, clients should consider implementing their plans as soon as possible. Although legislation could be retroactive to January 1, 2021 (which could result in the imposition of an unanticipated gift tax), it is considered more likely that legislation will have an effective date either as of the date a bill is announced or on a later date. Further, it may be possible to utilize planning techniques to mitigate the risk of retroactive legislation.

Please contact any member of the [Private Clients Practice Group](#) if you wish to discuss implementing any lifetime giving techniques.

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