

Perspective and Planning During Uncertainty

Recent market volatility and the public health implications of the spread of coronavirus (COVID-19) have been unsettling. It can be stabilizing in turbulent times to take a deep breath, focus on long-term planning strategies and goals, and assess whether there might be new opportunities to enhance your estate plan. We would like to share with you a few developments and possibilities affecting trust and estate planning that may be of interest:

Using Favorable Exclusion Amounts in a Decreased Market [and Prior to 2021]

The exclusion amount from federal gift and estate tax is currently \$11,580,000 per individual (allowing a married couple to transfer up to \$23,160,000 free of gift and estate tax). The generation-skipping transfer (GST) tax exemption is at the same level. Taxable gifts in excess of the gift tax exemption are taxed at a flat rate of 40%. Under current law, these exclusion amounts are set to revert to their pre-2018 levels (*i.e.*, approximately \$5,850,000, indexed for inflation) after December 31, 2025. Depending upon the outcome of the November 2020 federal elections, it is possible that Congress will enact legislation to reduce these exemptions or increase the gift tax rate *prior to 2026*. We continue to recommend that individuals engage in established planning techniques designed to transfer wealth to younger generations and, given the political nature of the tax laws, many individuals are taking steps to fully utilize these higher exemption amounts in 2020. Recent decreases in the market may present an opportunity to make transfers at lower values that may rebound in later years, allowing additional future appreciation on the gifted property to be transferred to younger generations without a gift or estate tax consequence.

Using Annual Exclusion Gifts

The gift tax annual exclusion amount is \$15,000 per donee (or \$30,000 for a married couple who makes a split gift). These exclusions offer an additional opportunity to make gifts at potentially lower values to younger generations, maximizing the amount of tax-free transfers.

Historically-Low Interest Rates

Treasury-prescribed interest rates applicable to certain estate planning transfers are near all-time historic lows. These rates continue to be favorable for individuals who engage in certain planning techniques that are tied to these measures, such as grantor retained annuity trusts (GRATs), sales to grantor trusts, and intrafamily loans. For example, the "hurdle" rate for a new GRAT created in March 2020 is 1.8%. Additionally, recent market declines may give assets in GRATs and assets sold to grantor trusts more upside potential. Rates applicable to intrafamily sales and loans are currently 1.50% - 1.93%, depending on the term of the loan. Families with existing intrafamily notes may wish to consider refinancing them at current rates.

Changes to Retirement Plan Rules

Significant new retirement legislation became effective on January 1, 2020. Among other things, the new law increases the age at which individuals must begin taking required minimum distributions from retirement plans to age 72, from 70.5, and allows contributions to an IRA after age 70.5. Importantly, the new law substantially alters the income tax deferral opportunities available to certain beneficiaries of inherited IRAs by limiting their ability to "stretch" required minimum distributions over their lifetimes. These provisions could potentially have a major impact upon the estate plans of individuals with significant assets in a qualified plan or IRA.

Life Events

During a period of uncertainty, many individuals may be concerned about estate planning issues that are unrelated to taxes. Life events such as marriage, divorce, birth, retirement, incapacity or serious illness, and changes in your relationship with or the capacity to serve of an individual you have chosen as executor, trustee, guardian, attorney-in-fact or health care agent, may necessitate adjustments to an estate plan.

If you have any questions about how these topics may impact your family or your estate plan, or what other planning opportunities are relevant for you, please contact us.

This alert is for general informational purposes only and should not be construed as specific legal advice. If you would like more information about this alert, please contact one of the following attorneys or call your regular Patterson contact.

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