

PUBLICATION

Estate Planning Alert: The Time for Planning is Now

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Earlier this year we issued an Estate Planning Alert advising high-net worth individuals to consider taking certain estate planning steps by the end of 2020. As the end of the year approaches, it is important to again consider whether there are steps you and your family should take in light of possible federal tax transfer changes on the horizon as a result of the recent election and upcoming Senate runoff races in Georgia.

The Tax Cuts and Jobs Act of 2017 (the "Act") temporarily increased the Unified Credit amount (the exemption available for estate, gift and generation-skipping transfer taxes) for U.S. persons to \$10 million indexed for inflation. That amount for 2020 is \$11.58 million. In 2020, a married couple can transfer \$23.16 million to their heirs either via lifetime gifts or via their estates. The Unified Credit amount, which was temporarily increased by the Act, is scheduled to sunset on January 1, 2026, at which time the Unified Credit will return to \$5 million per U.S. person, with adjustments for inflation.

President-elect Joe Biden's tax plan includes a proposed reversion of the estate and gift tax exemption and tax rate to 2009 levels. In 2009 the estate tax exemption was \$3.5 million, the gift tax exemption was \$1 million, and the highest marginal rate was 45 percent on taxable transfers. The current highest marginal rate in 2020 for taxable transfers is 40 percent. The President-elect has also suggested he may eliminate the step-up in basis at death, which is a favorable tax treatment that gives heirs and beneficiaries who inherit property from a decedent a basis equal to the fair market value of the inherited property. The step-up in basis at death reduces capital gains tax for not just the wealthy, but all taxpayers. It is unclear how the mechanics of such a plan would work; for example, whether capital gains tax would be triggered at death as a realization event. The President-elect has also proposed increasing the capital gains tax rate.

Formal tax legislation requires approval of the House and Senate, as well as either the signature of the President or a veto override by both the House and Senate. In 2021 Democrats will have a slim majority in the House. Senate control will remain up in the air until Georgia's runoff elections are completed for its two Senate seats, which will not occur until 2021. Whether the President-elect is able to make the changes he has proposed when he takes office will likely depend on control of the Senate, which we cannot currently predict. Considering budget issues the continued economic crisis created by COVID-19, it is possible that even if Democrats do not control the Senate, the parties will reach an agreement to make tax changes that include reduction of the Unified Credit in 2021, although it may not be to the levels proposed by the President-elect. We also note that most states no longer have their own parallel gift and estate taxes; however, states are faced with increasing economic challenges and may look at enacting transfer taxes to increase the tax base.

If you are fortunate enough to have an estate that exceeds the Unified Credit amount, you should consider using the Unified Credit before you lose it. If you are interested in learning more about how you can take advantage of the planning opportunities and strategies mentioned herein in 2020, please contact one of [Baker Donelson's Estate Planning attorneys](#).