

A Look Ahead: Transfer Tax Planning in 2021

If 2020 has given us anything, it is the opportunity to become more flexible. Flexibility is key to any good wealth transfer plan. Below is a review of a few significant transfer tax planning considerations to keep in mind:

1. Gift and Estate Tax Exemption. The gift and estate tax exemption amount will increase from \$11.58 million per person to \$11.7 million in 2021. For married couples, each spouse can use the exemption, resulting in a combined 2021 exemption amount of \$23.4 million (assuming proper planning and elections are made). Note: Per the 2017 Tax Cuts and Jobs Act, on January 1, 2026, the exemption amount will revert back to the pre-Act amount of \$5 million per person, as adjusted for inflation; such amount is projected to be approximately \$6.5 million per person.

2. GST Tax Exemption. The generation-skipping transfer (GST) tax exemption is currently set at the same amount as the gift and estate tax exemption and is also indexed for inflation each year. Thus, the exemption amount will increase to \$11.7 million per person in 2021. On January 1, 2026, the GST exemption will also revert back to \$5 million per person (adjusted for inflation).

3. Annual Exclusion. Each year, the Internal Revenue Service (IRS) permits a donor to transfer a specified amount to a noncharitable donee without using any of the donor's gift or estate tax exemption, the "annual exclusion." Annual exclusion gifts are a great way to pass wealth to the next generation without incurring income or transfer tax liability.

The annual exclusion from gift tax is also adjusted based on inflation. In 2021, the exclusion remains at \$15,000 per donor per donee. Accordingly, a donor may gift up to \$15,000 to a donee in 2021 without using any of the donor's gift and estate tax exemption. A married couple can gift up to \$30,000 to each donee.

4. Biden Administration. There is much speculation regarding the possible changes a Biden Administration will make to tax laws in order to curb what President-Elect Joseph Biden considers untaxed or undertaxed wealth transfers.

During the campaign, President-Elect Biden proposed increasing the individual income tax rates for taxpayers with incomes in excess of \$400,000 to pre-2017 rates. The campaign also advanced the elimination of capital gains rates for taxpayers with incomes in excess of \$1,000,000, which will require those

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taxpayers to use their individual income tax rates.

While President-Elect Biden did not propose specific changes to the gift and estate tax exemption amount during the campaign, if no action were taken, as discussed above, the inflated gift and estate tax exemption amount will be reduced to pre-2017 levels beginning in 2026 (as adjusted for inflation). Some commentators suggest a Biden Administration will move to accelerate that reduction, perhaps even retroactively to January 1, 2021.

While the more extreme predictions seem unlikely, President-Elect Biden did run on a platform of reforming wealth transfers, including favorable income tax rules that currently apply to capital gains property inherited at death. Specifically, President-Elect Biden submitted two alternative proposals regarding capitals gains: first, ending the basis "Step-Up" rule; or second, taxing capital gains at death (unless the beneficiary is a surviving spouse or charity).

The basis "Step-Up" rule equalizes an inherited asset's basis to the fair market value of that asset at the time of death, which eliminates any accumulated capital gains. Instead, President-Elect Biden proposed eliminating the rule, which will either result in inherited assets remaining at the decedent's basis such that the beneficiary were to later sell that asset, the beneficiary will owe capital gains taxes based on the decedent's original basis; or the decedent's death could trigger a deemed sale of all assets.

5. Georgia Runoff. The result of the January 5, 2021 Georgia runoff election may shift the balance of power in Washington, thereby paving the way for the tax reforms discussed above, *or* it may not. Even if the Democrats win the two hotly contested Senate seats and gain the slimmest of majorities in the Senate (with Vice President-Elect Kamala Harris as a tiebreaker), the prospect of sweeping reform seems unlikely.

6. COVID-19 Relief. COVID-19 relief measures swept through Washington this past year, with some tax implications not yet fully understood, one of which involves one of the more recognizable relief measures, Paycheck Protection Program (PPP) loans. PPP loans helped employers retain employees during the pandemic by covering payroll and other costs for a number of weeks. PPP loans are fully forgiven if certain guidelines are met.

While the PPP loan forgiveness amount will not be taxable, it was unclear if the business expenses paid with the PPP loans are deductible. The IRS has taken the position that since the loans themselves are nontaxable, expenses paid for with



them should not be deductible as the recipients would be receiving a double benefit by deducting expenses paid for by the government.

On December 21, Congress passed a new COVID-19 relief package, which permits expenses paid with PPP loan funds to be deducted. It is widely reported that President Trump will sign the relief package into law.

In light of tens of thousands of recipients gearing up for 2020 tax preparation, this deductibility question, which will likely be resolved shortly, highlights the caution required with filing 2020 returns. Until final results are provided, careful attention should be paid to the latest proposals regarding these relief measures.

If you would like more information regarding transfer tax planning opportunities and strategies in 2021, please contact your Reinhart attorney or a member of Reinhart's [Trusts and Estates](#) Practice.

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