

## The Clock Is Ticking on Estate and Gift Planning

November's election results could have a profound effect on the estate and gift tax laws. Among a number of significant issues are:

1. Whether the current exemption from estate and gift tax (which is at an all-time high) will be reduced and if so, to what amount; and
2. Whether the biggest "gimme" in death tax planning — a step-up in income basis at death — will be eliminated.

While the Biden-Harris campaign has yet to release a specific or formal plan with respect to these issues, you should be aware of the potential changes and the possibility that some action should be taken this year.

### The Pre-Election Landscape

**Annual Gift Amount.** The annual gift tax exclusion for gifts to individuals in 2020 is \$15,000, or \$30,000 for gifts made by a married couple.

**Exemption Amount Doubled.** Each taxpayer's estate and gift tax exemption for 2020 is \$11,580,000, or \$23,160,000 for gifts made by a married couple (Increased Exemption Amount). As discussed in a prior [Tax Update](#), this all-time high Increased Exemption Amount is a result of a 2017 tax law that doubled each taxpayer's exemption amount. The Increased Exemption Amount is only temporary and is scheduled to "sunset" and revert back to pre-2018 levels (\$5,000,000 per taxpayer, adjusted for inflation) on January 1, 2026 (or earlier, if Congress were to take action).

**Stepped-Up Basis.** Under current law, the income tax basis of an asset held at death is increased (or stepped up) to its fair market value as of the taxpayer's date of death. This means that any unrealized gain in the asset during the taxpayer's life would be eliminated at his or her death. When an estate beneficiary later sells the asset, any gain is based on the beneficiary's new stepped-up basis.

### Changes Possibly Afoot

**12/31/2020 or Bust?** A prior [Tax Update](#) explained how much a taxpayer needs to gift under the current law in order to not lose his or her Increased Exemption Amount. Why not wait until after the election to decide whether to make these gifts? A concern with waiting is the possibility that a Biden White House and Democratic Congress enact a law in early, mid, or even late 2021 that is effective retroactively to January 2021 and that significantly reduces the estate and gift exemption amount (for example, down to \$3,500,000 per taxpayer). To avoid any uncertainty, taxpayers who want to utilize some or all of their Increased Exemption Amount should complete gifts prior to December 31, 2020. Waiting until November 4 to begin planning may make it very difficult to use effectively many ideal planning techniques because of the steps that may be involved and the short time remaining in the calendar year.

**No More Basis Step-Up?** Former Vice President Biden has proposed eliminating basis step-up at death. It is not yet known what capital gains tax regime his administration would propose in its stead.

One option is that "carryover" basis would apply to testamentary gifts (the same currently applies to lifetime gifts). As a result, the estate beneficiary would receive the deceased taxpayer's income tax basis in the asset. In that case, any unrealized gain during the taxpayer's life would be deferred until the asset's eventual sale.

A second option is that unrealized gain in the asset during the taxpayer's lifetime would be taxed at



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his or her death (in addition to any applicable estate or inheritance taxes).

What is certain, however, is that a potential elimination of basis step-up needs to be taken into account in determining whether to make gifts now and, if so, with what type of assets.

These and other income tax proposals already released by the Biden-Harris campaign could have an impact on your estate plan and may require action now.

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**If you would like to discuss further, a member of Cozen O'Connor's Private Client Services team is happy to assist you.**