

# PUBLICATION

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## Estate Planning Alert: Take Advantage of 2020 Planning Opportunities Now

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**If you are a high-net worth individual, 2020 may be the time to take advantage of the opportunity created under a confluence of low applicable federal rates, valuation opportunities, and the temporarily increased Unified Credit amount created by the Tax Cuts and Jobs Act of 2017 (the Act).**

In 2017 the Act temporarily increased the Unified Credit amount (that is, 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. However, 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. Depending on the outcome of the upcoming presidential election, as well as considering the possible budget issues the economic crisis poses, some planners believe the Unified Credit amount could be reduced sooner, even as early as 2021. In recent years the estate tax rate has been 40 percent for estates over the applicable exemption amount. Additionally, most states have eliminated their own gift and estate taxes, but in the current economic environment states will be looking to raise revenue, which some states could look to do via gift and/or estate tax. 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.

This Alert identifies several planning techniques that may be appropriate for you to use your Unified Credit as well as planning techniques to take advantage of the following two additional conditions that make 2020 an appealing year to make gifts and/or loans:

- Low Applicable Federal Rate – The applicable federal rate (AFR), which is the minimum interest rate that must be used for related-party loans, will be 0.14 percent for short-term loans, 0.35 percent for mid-term loans, and 1 percent for long-term loans for the month of September 2020.
- Lower Valuations – The current economic crisis may have temporarily suppressed the value of closely held businesses, or even publicly traded stock, real estate, and other assets. If you are considering a large gift, a valuation by a qualified valuation expert may reflect a fair market value that is favorably low.

Some examples of planning techniques that could help you to utilize some or all of your Unified Credit include:

- Spousal Lifetime Access Trust – A Spousal Lifetime Access Trust (SLAT) is a trust where one spouse is the trustor, and the other spouse is a beneficiary of the trust during their lifetime. Each spouse can set up their own irrevocable SLAT (with the drafting and gifting being done carefully so as to avoid the reciprocal trust doctrine) so that each spouse can be a beneficiary of a trust and thereby sustain the spouses' standard of living. When properly drafted, and because the SLAT is irrevocable, the value of the assets is frozen at the time of the gift to the SLAT and is not included in the taxable estate of either spouse. One possible downside to a SLAT is if one spouse passes away or there is a divorce.

- Gifts and/or Sales to Grantor Trust – An Intentionally Defective Grantor Trust (IDGT) is a type of irrevocable trust where transfers are complete for federal transfer tax purposes, but incomplete for income tax purposes. In this way a grantor can make a gift to an IDGT and continue to pay the income tax on the assets of the trust. If you are not ready to irrevocably gift assets, a sale to a grantor trust can be a good way to achieve an estate "freeze" where the assets will appreciate in value inside the trust, while also giving you a "string" on the income through a note. The note can utilize the currently low AFR rate.
- Zeroed-Out Grantor Retained Annuity Trust – A Grantor Retained Annuity Trust (GRAT) is an irrevocable trust where the trust pays the grantor an annuity for a set period of years. At the conclusion of the set period the remainder passes to the chosen beneficiaries (either outright or in trust). A "zeroed-out" GRAT uses none of the grantor's Unified Credit amount because the grantor must receive an annuity equal to a total of 100 percent of the initial GRAT value plus interest at the AFR. Because the AFR is currently low, this strategy is more likely to be successful in transferring money or other assets to the remainder beneficiaries.
- Dynasty Trusts – The exemption amount under the Unified Credit includes an exemption for generation-skipping transfer tax of \$10 million indexed for inflation (\$11.58 million in 2020). This creates an opportunity for individuals to create so-called "dynasty" trusts that continue in place for multiple generations and effectively skip taxation in the estates of beneficiaries over the course of those generations. Some states have laws that are more friendly to this type of trust, including longer rule against perpetuities periods, so jurisdiction should be considered when setting up a dynasty trust.
- Family Limited Partnership – A Family Limited Partnership (FLP) is generally created to serve a business purpose for the family involved, and has the benefit of potential valuation discounts for the owners due to lack of marketability, lack of control, or both. This strategy can be used in conjunction with some of the other strategies mentioned in this Alert.

The above strategies all have pros and cons. For example, gift transfers made during your lifetime generally do not receive a step-up in tax basis for federal income tax purposes. Additionally, we expect valuation experts will be in high demand over the next several months, so the time to act is now. 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 [Alton E. Bayard III](#), [Leonard C. Martin](#), [John P. Edgar](#) or one of [Baker Donelson's estate planning attorneys](#).