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NOVEMBER 2020 ELECTION AND POSSIBLE CHANGING TAX LAWS

Dear Clients and Friends:

There is no sugar-coating the obvious: 2020 has been a challenging year. The COVID-19 pandemic, with its global reach, has infiltrated the lives of so many and has necessitated many changes across various industries. Adjustments are being made not only to healthcare and business practices, but to everyday life, with the hopes of simultaneously combating the virus and creating a safer and more efficient tomorrow. We have all either embraced, or reluctantly adapted to, these changes. And, with the impending election in November, even more changes could be on the horizon; namely, major changes to the estate, gift and generation-skipping transfer (“GST”) tax laws.

When the Tax Cuts & Jobs Act (the “Act”) was enacted in December 2017, the federal estate/gift and GST tax exemptions were essentially doubled until 2025. Beginning in 2018, individuals saw an increase in their federal exemptions from what would have been \$5,600,000 to \$11,180,000, and the exemption thresholds have increased each year with inflation. For 2020, the federal estate, gift and GST tax exemptions are \$11,580,000. On January 1, 2026, these exemptions would return to pre-Act levels (i.e., \$5,600,000, indexed for inflation). As we approach the November election, the possibility of a change in the presidency and the Senate has increased. Therefore, we must be mindful of what impact a “Democratic Sweep” may have on our tax laws and our clients. If we are to believe the many pundits, it seems very possible that one of the first agenda items for a new president and a new Congress would be to repeal the Act. If this were to occur, the federal gift, estate and GST tax exemptions could be reduced much sooner than under current law.

If the federal exemptions decrease dramatically, the opportunity to pass a significant amount of assets free of federal transfer taxes to your family may be lost. Furthermore, guidance previously issued by the United States Treasury makes it clear that any gifts made while the federal exemptions are at the higher levels will not be subject to future taxation if the exemptions are reduced.

It is important to not overreact, as any potential changes are contingent on a number of events; namely, a new president, Democrats’ control of the United States Senate and the passage of legislation which would repeal the Act. However, we should begin discussing whether it makes sense for you to make taxable gifts at this time to utilize the higher federal exemptions. A gifting program would be designed for you and your family to reflect your wishes and to provide you with the flexibility you may desire.

Techniques that have always been available may be of increased importance, such as establishing a Spousal Lifetime Access Trust (SLAT), which would allow you to use your exemptions currently, remove future appreciation in the gifted assets from your estate, while providing a spouse with the ability to access the funds in the future.

In this year filled with unknowns, one thing is for certain: your attorneys at Blair & Potts are here to help. As always, we are happy to assist you with your estate planning needs and provide guidance during these unprecedented times. Please feel free to reach out to us to schedule a call or meeting to discuss your current estate plan and your potential gifting.

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