

## TRUST & ESTATES LAW ALERT

April 2021

### PROPOSED LEGISLATION MAY BRING SWEEPING CHANGES TO THE ESTATE PLANNING WORLD

The “For the 99.5% Act” (introduced by Sen. Bernie Sanders) and the Sensible Taxation and Promotion (STEP) Act (introduced by Sen. Chris Van Hollen) collectively propose broad Equity changes to federal estate, gift and income tax laws that, if enacted, would significantly impact common estate planning strategies and transfer taxation. **We urge clients to consult with their Phillips Nizer attorney as soon as possible to discuss how the proposed legislation may impact their overall estate plan and to determine whether planning opportunities may be available under current law before any legislation is finalized.**

While it is impossible to predict which provisions will make it into law, the proposed bills include many significant changes, some of which are highlighted below:

- Reduce the federal estate tax exemption to \$3.5 million and the federal gift tax exemption to \$1 million (from the current exemption of \$11.7 million).
- Increase the federal estate and gift tax rates from 40% currently to between 45% - 65% depending on the size of the estate or gift.
- Limit certain annual exclusion gifts to no more than \$30,000 per donor (such as “Crummey” gifts made to a trust).
- Effectively impose a 50-year limit on trusts exempt from generation-skipping transfer (“GST”) tax, potentially impacting all trusts that benefit multiple generations.
- Severely limit the availability of minority interest discounts and lack of marketability discounts when valuing certain family-owned or controlled entities.
- Practically eliminate the viability of “GRATs” as an estate planning technique by requiring a minimum 10-year term and a significant remainder gift.

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- Include certain “Grantor Trusts” in the estate of the grantor, effectively eliminating the use of Grantor Trusts in various popular estate planning strategies (including life insurance trusts and intentionally defective grantor trusts).
- Deem property transferred by gift or at death as if sold for its fair market value, triggering capital gains taxes (eliminating stepped-up basis at death and carry-over basis for gifts).
- Provide only a modest \$1 million exclusion from tax for unrealized gains at death (\$100,000 of which can be used during lifetime).
- Tax unrealized gains on property held in certain Grantor Trusts (i) on distribution, (ii) at the death of the Grantor, and (iii) when the trust ceases being a Grantor Trust.
- Tax unrealized gains on property held in certain non-grantor trusts every 21 years.

As proposed, some of these changes would be effective retroactive to the beginning of 2021 while others would be effective on the date of enactment of the act or on January 1, 2022.

This is intended as an overview of certain important proposed changes to the law and not as a comprehensive summary. These proposals have the potential to significantly impact the estate planning landscape as we know it. Although it is uncertain which changes, if any, will ultimately be enacted, the push for substantive tax reform appears to have real momentum. **Please contact us to discuss how the proposed changes to the law may impact your estate plan.**

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