

Looking Beyond the COVID-19 Crisis

March 23, 2020

KEY POINTS

First and foremost, we hope you and your families are well and managing as best as possible during these unprecedented times. Although this crisis presents innumerate unforeseen challenges in the short run, it also presents certain opportunities to consider taking advantage of in the long run, if appropriate, in a timely fashion. These include:

- Making changes to or creating an estate plan, which can be prepared remotely through the use of virtual notarizations, virtual witnessing or alternatives to witnessing.
- Making estate planning transfers of assets at a time of advantageous pricing, including depressed valuations and low interest rates.
- Crafting win-win structured settlements to previously unseizable cases and novel settlement opportunities for those who think outside the box.
- Preparing to implement steps before the year-end in anticipation of higher tax rates, new taxes, and lower exemptions that may take effect some time in 2021.

Estate Planning Changes. The current health crisis is reminding people for whom planning has been on the back burner that it is important to make the changes necessary to keep one's estate plans current (and put an estate plan in place in the case of those who do not have one). All changes to existing documents, as well as the creation of new documents, can be prepared remotely. Execution of documents has its challenges during these times of shelter in place, but there are many potential solutions. The governors of many states have permitted virtual notarizations under many circumstances, and some states permit virtual witnessing as well. Where witnessing is required, such as for wills, and where virtual witnessing is not permitted, one can consider declarations of trust instead, which generally do not require witnessing. One can also consider holographic (i.e., handwritten) wills, which also do not require witnessing and which are options in most states — in some states under limited circumstances that may or may not apply, and in other states under much broader circumstances or even all circumstances.

Depressed Valuations. Depressed valuations present a good opportunity to make estate planning transfers of assets at advantageous values. The transfers can be simple outright transfers or leveraged transfers using one or more traditional estate planning devices. Without further Congressional action, the \$10 million applicable exclusion from gift, estate and generation-skipping transfer taxes, indexed for inflation (this year \$11.58 million per person), is due to sunset on December 31, 2025. Of course, it could be repealed sooner. But even if it is extended past 2025,

it always makes sense to use one's transfer tax exemption sooner rather than later (to remove future income from, and appreciation to, transferred assets, as well as the underlying assets themselves). What better time than when valuations are depressed?

Low Interest Rates. Low interest rates present an unparalleled opportunity to create grantor retained annuity trusts and to make tax free sales to grantor trusts (both a means to transfer future appreciation to assets) when the hurdle rates (i.e. the rate of return that must be retained by the transferor or seller) are unprecedentedly low, and they are so likely to work well – and when there is no downside, if they don't for some reason beat these historically low hurdle rates. The exceptionally low interest rate environment presents a rare opportunity to move appreciation out of one's estate, in many cases without having to use any of one's lifetime transfer tax exclusion. Low interest rates also work well for private annuities, which might be advantageous for individuals of compromised health, for self-canceling installment notes and for charitable lead trusts. One might consider refinancing existing notes at these new lower rates, and, in the case of estate litigation, if funds need to be borrowed or assets purchased over time to effect a settlement, the cost of borrowing (or paying over time) to effectuate a settlement may never be lower.

Internal Revenue Service Notice 2020-18. The Notice provides that federal income tax returns (and respective tax payments) are not due until July 15, in the case of individuals, estates, partnerships, S Corporations and C Corporations, where the returns were originally due on April 15. It is unclear whether gift tax returns and payments may have been extended. Estate tax returns and payments have NOT been extended, nor have fiduciary income tax returns for estates not on a calendar year. Some states automatically follow federal filing and payment procedures, but others do not and will have to issue guidance before one can delay filing and payment at the state level.

Estates and Trusts Administration Deadlines. While statutes of limitations have generally been suspended and some federal income tax returns and payments have been delayed, the remaining myriad of routine local, state and federal tax and non-tax filing and reporting deadlines in the routine administration of estates and trusts generally have NOT been suspended. While one would hope that missed deadlines will be treated leniently, care should be taken to make sure that all deadlines continue to be met and estates and trusts continue to be administered pursuant to existing rules and regulations.

Estate, Trust and Fiduciary Litigations. With statutes of limitations being suspended by many states, and with most state and federal courts suspending the discovery process and motion calendars for most pending proceedings and the ability to file most new proceedings, operating on a triage-only basis, this may be the “wake up” call that litigants need to recognize that they cannot depend upon the courts to solve their problems, at least not for many years (and perhaps not in their lifetimes, creating litigation havoc for the beneficiaries of their estates). There now may be a premium on crafting win-win structured settlement to previously unseizable cases. The new planning opportunities created by the current crisis may well provide novel settlement opportunities for those who think outside the box.

Day Counts. For foreign individuals who may be in trouble with their day counts in avoiding US or other taxation, with proper planning, the inability to travel may create an opportunity to avoid what would otherwise be tripping a tax trap.

Donative Transfers Across Borders. Well intentioned donors assisting family members in need in other countries, whether US donors to non-US family members or non-US donors to US family members, should be careful to avoid triggering adverse tax or other consequences, either to themselves or to the recipients, in connection with these well-intentioned transfers.

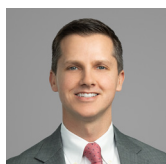
Possible Change of Administrations and Legislative Changes. Year-end this year will likely require more planning changes than usual, particularly if there is a change in administration. Even without a change in administration, however, one can expect the possibility of unforeseen changes in response to the cost of dealing with the current crisis. Thought should be given now to prepare for what steps, if any, one might want to implement before year-end

(such as conversion of IRA's to Roth IRA's) in anticipation of higher tax rates, new taxes, lower exemptions, etc. that may take effect some time in 2021.

We will continue to use our collective knowledge and experience to help everyone both meet the challenges that lie ahead and brainstorm how to take advantage of the opportunities they present. We will send out additional bulletins toward that end as there are relevant developments.

CONTACTS

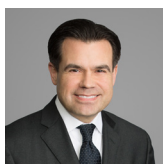
For more information, please contact any of the following attorneys or Katten's [Private Wealth](#) practice.



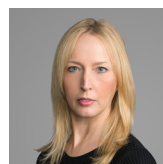
David Allen
+1.312.902.5260
david.allen@katten.com



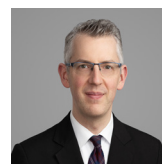
Michelle Canerday
+1.312.902.5515
michelle.canerday@katten.com



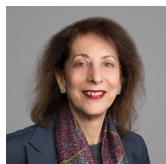
Neil Carbone
+1.212.940.6786
neil.carbone@katten.com



Bonnie Chmil
+1.212.940.6415
bonnie@chmil@katten.com



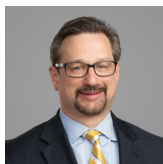
Adam Damerow
+1.312.902.5250
adam.damerow@katten.com



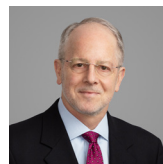
Ronni Davidowitz
+1.212.940.7197
ronni.davidowitz@katten.com



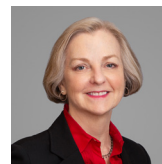
Abigail Feinman
+1.310.788.4722
abigail.feinman@katten.com



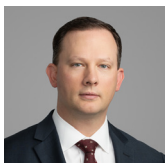
Charles Harris
+1.312.902.5213
charles.harris@katten.com



Michael O. Hartz
+1.312.902.5279
michael.hartz@katten.com



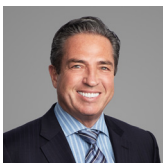
Carol Johnston
+1.310.788.4505
carol.johnston@katten.com



Tye Klooster
+1.312.902.5449
tye.klooster@katten.com



Kathryn von Matthiessen
+1.212.940.8517
kathryn.vonmatthiessen@katten.com



Joshua Rubenstein
+1.212.940.7150
joshua.rubenstein@katten.com



Matthew Sperry
+1.312.902.5557
matthew.sperry@katten.com

Katten

katten.com

CENTURY CITY | CHARLOTTE | CHICAGO | DALLAS | HOUSTON | LONDON | LOS ANGELES | NEW YORK | ORANGE COUNTY | SHANGHAI | WASHINGTON, DC

Attorney advertising. Published as a source of information only. The material contained herein is not to be construed as legal advice or opinion.

©2020 Katten Muchin Rosenman LLP. All rights reserved.

Katten refers to Katten Muchin Rosenman LLP and the affiliated partnership as explained at kattenlaw.com/disclaimer.

3/23/20