PODCASTS | 10.01.2020

The 2020 Election Could Impact Tax Planning

Depending on which candidate wins office, the 2020 presidential election may radically alter the tax landscape for high net worth individuals. In this episode of our Family Office Podcast series, Kristin Abati and Brian Monnich, practice group leaders of Choate's Wealth Management Group, discuss potential new or increased tax changes and techniques to consider now that may reduce tax burdens going forward.

Download Podcast



Transcript

Kristin Abati: Hello everyone and thanks for tuning in. My name is Kristin Abati. I'm a partner in Choate's Wealth Management Group and I'm also one of two co-chairs of that group. I'm here with my partner and fellow co-chair Brian Monnich. Hi Brian.

Brian Monnich: Hi Kristin.

KA: So Brian we're going to be talking taxes today. In particular, we're going to talk about some potential tax law changes that might come about after the November election. So Brian, do you want to set the stage for us?

BM: Sure. What we're focused on in particular is the possibility of what I would call the Democratic clean sweep. So this would be a scenario on which Joe Biden wins the presidential election and Democrats take control of Congress. In that instance, then I think we could expect some significant tax law changes that would be relevant to our clients and in particular, we're pretty confident that if there were this Democratic clean sweep that there'd be some changes in the estate tax exemptions for sure and there could be possible changes to income tax rates for high earners. I'll leave it to you to just set the stage for the estate tax exemptions.

KA: Thanks, Brian. That's a great point, what you just said. These changes really do depend on a clean sweep. Because even if Biden is elected, if Congress remains divided or in Republican hands, all of these changes become a lot more difficult for Biden to accomplish. Going back to the estate tax changes though, which we do feel like are the most likely of all of these potential changes, what everyone should just keep in mind is that under current law, every person can give away more than $11 million dollars during life or death. The exact amount is $11.58 million and that's a really big number. In historical terms that's the biggest

© 2026 Choate Wealth | Two International Place, Suite 3000 | Boston, MA 02110 | 617-248-5000

Disclaimer: Legal advice and related services are performed by Choate Hall & Stewart LLP ("Choate"). Investment management advice is provided through our subsidiary, Choate Investment Advisors ("ChoateIA"), a SEC-registered investment advisor.

we've ever had. As recently as 2002, it was $1,000,000 per person. In 2009, it was $3.5 million dollars per person and now we're up to $11.58 million per person. So really big numbers and if your married you can combine your two exemptions and give, right now, more than $23 million dollars between you. So big numbers, big from a historical perspective, and what candidate Biden has proposed is going back to what we would call maybe more normal numbers from 2009 where each person can give $3.5 million dollars and a married couple can give $7 million together. So, where we are right now, big exemptions, where we're likely to go if Biden is elected president is considerably less. For a married couple, the difference is $16 million dollars going from $23 million down to $7 million.

BM: And Kristin if I could just chime in there. The opportunity for our clients is if say you're a married couple and you have $23 million dollars of exemption today that might not be there next year, depending on election results. We're encouraging our clients to use that available exemption, that extra available exemption, today because what we're worried about is if they don't use it now, they might lose it as early as next year, and actually using the exemption can be very straight forward. It would be simply making gifts to kids, other family members, but using the exemption to pass along wealth to family members and accelerating planning that would otherwise happen when you pass away. And we really would encourage and emphasize making gifts in trusts and Kristin, I'll let you talk in more detail about why making a gift in trusts, in our view, would be preferable to making outright gifts.

KA: Yes, that's a great point, Brian. That's all exactly right. The solution to this potential problem, as Brian just laid out, the possibility that your exemptions will go down is simply to use them now. So, as Brian said, it's pretty straight forward. Which is great news. That's it's a relatively easy fix and the benefit of making gifts in trust as Brian was hinting at. You could certainly just give $23,000,000 to your kids outright. But if you do that, if you give assets to an individual, not in trust, then those assets are subject to the claims of that person's creditors, meaning if they get divorced, those assets can be taken in the divorce and also if you give assets directly to a person, they die owning those assets themselves and at their death, there is a potential estate tax event. You can save those estate taxes and also protect those assets from the claims of creditors if you give them to that person in trust. So, we do a lot of planning for our clients where we set up irrevocable trusts for them and then they make gifts into those trusts. Their children, whoever their preferred beneficiaries are, can benefit now. They can get distributions now from that trust, but whatever they don't need remains in trust, saved for the future. Saves loss of potential future estate taxes and also is protected from creditors. So that's our best advice for clients if you're going to make large gifts.

BM: That's right Kristin and we work with our clients in creating trusts. We can customize the trust arrangements to fit the family's particular circumstances and even make them very flexible for kids and grandkids so that the family's comfortable with the arrangement and the kids access to the funds over time. Now it is important to say that this planning is not for everyone and when I talk to clients I make it clear and this is absolutely fundamental. You should only be making gifts if you're giving away assets that you don't think that you and your spouse might need for your own purposes later. The first thing that everyone needs to consider when thinking through possible planning in advance of possible tax law changes is, are you in a position to make any gifts at all. Just based on your own financial needs going forward. And this is where it gets a little tricky, with the possible future tax law changes. As Kristen mentioned at the beginning, there's very healthy $23 plus million dollar exemption for married couples now. And what we anticipate could happen, if there's this Democrat clean sweep, is that those exemptions could go down to as low as, call it $7 million, as early as next year. The opportunity now, if that's what happens, is to make gifts beyond $7 million because the exemption that might be lost is that $16 million dollars between the $23 that's existing now and the $7 that might be available next year. And so, really the folks that might consider making gifts now are those that can afford making very large gifts, mainly gifts over $7 million dollars. And so, I think there is going to be a lot of talk about a possible tax law changes, possible planning opportunities, but it's important to understand, and that it's really only for people that are interested in making gifts of that magnitude that would be taking advantage of an opportunity by making the gifts before the end of the year.

KA: Yes, that's a great point Brian, that's exactly right. The rush to make gifts should be tempered by both of those things you just said. First, can you afford it? That's the most important question. We always recommend to clients, that they should not over give. And then secondly, even if you can afford gifts, which is excellent, and any bit of gift planning is important, even if its $7 million. But you don't have to rush to do those gifts, if what you're planning to do is more on the order of $7 million as Brian said. It's really only for people who can afford to give those much, much bigger dollars who should be accelerating their thinking and get moving now, really in the next couple months to do that planning.

BM: And by the way, we have a lot of clients who, just given the amount of their wealth, they've already used their exemptions, so, if you've already used your exemptions, great job, no need to rush into anything, but if you haven't used the full extent of your

© 2026 Choate Wealth | Two International Place, Suite 3000 | Boston, MA 02110 | 617-248-5000

Disclaimer: Legal advice and related services are performed by Choate Hall & Stewart LLP ("Choate"). Investment management advice is provided through our subsidiary, Choate Investment Advisors ("ChoateIA"), a SEC-registered investment advisor.

exemptions, and there is this Democratic clean sweep as we're describing it, by all means, let's be in touch and talk through whether it would be appropriate for you to use your exemptions before the end of the year. With that I think, Kristin, why don't we turn our attention to possible income tax law changes if you want to just set the stage for what Biden's proposing there.

KA: So, I think we made this point at the beginning, but just to say it again, definitely made the point that all of these changes, most likely dependent on a clean sweep for the Democrats. But I'd also say between the possible changes, the income tax changes, I'm about to describe are very speculative. We can tell you what Biden has in mind and what he has proposed. We will do that. But I'd say of all the changes, these are the ones that are most susceptible to horse-trading in Congress, and the actual rates and what might actually might be passed is as I think anyone's guess but we can tell you what Biden's proposed. So let me just remind everybody what the current rates are, perhaps before we go to Biden. So under Trump's tax cuts, the top rate right now is 37% for the highest earners. That's your top rate and as it has been for quite a long time the capital gains tax rate is 20% (long-term capital gains tax rate is 20%). So Biden has proposed increasing the top income tax rate on ordinary income for the highest earners. So people making $400,000 or more, increasing the rate from 37% to 39.6%. So nearly a 3% jump there. But more significantly, a bigger change he has also proposed increasing the capital gains tax rate from its very favorable and long-standing 20% up to that same ordinary income tax rate that is up to 39.6%. So that's a big jump. Again, these are just proposals and he has actually adopted stances that are pretty similar to what a lot the other Democratic candidates were pushing during the election or during the primaries. So, this is consistent with the overall Democratic platform, so that's what he has in mind.

BM: And Kristin, just to be clear, all of this is in the form of proposals. There is nothing about this that is definitive whatsoever. But as far as what Biden is proposing, in connection with the increase of the capital gains tax rate from 20% to nearly 40% as proposed, that would apply to high-income earners. That's been defined as taxpayers that are earning over a million dollars each year. So it could be that these tax rates are definitely getting everyone's attention. It could be if you're not earning an income of that magnitude that you won't be affected, but of course, we do have a lot of clients that earn income in excess of that threshold and so, if this particular tax law change were to take effect, it would have a real impact on our high income earning clients and again I think we'd only encourage this after the elections and after there has been a Democratic clean sweep. But in that event, if clients know that there going to be selling stock with a lot of gains, it might be worth a conversation of accelerating those sales into the year 2020 rather than deferring into 2021 because the capital gains tax on the realized gain will be significantly less, almost half if that sale happens this year rather than next.

KA: That's exactly right. I agree completely with the timing. That is, don't rush to accelerate gains right now, just because we're telling you about this proposal, wait for the election. Let's see what really looks like might happen. The election comes and goes. It's not a clean sweep. This change in particular becomes a lot less likely and let's have a conversation. Because what you don't want to do is unnecessarily trigger gain, accelerate that tax because when it will be due if you accelerate it into 2020, is in either April or October 2021. If you wait to make that sale until 2021, the taxes aren't due until April or October 2022. So you have some consideration of the time value of your tax money. That is not having to pay it so quickly to the government. There are a lot of moving parts. So, I agree completely with Brian's timing comment which is don't rush, let's see what happens in the election with respect to these income tax potential changes. They are just so unknown. Let me just contrast that with our first topic which was to give away your exemption amount. There's very, very little downside to accelerating gifts, using your exemption amount, because if you can afford to do it, we'd recommend you do it during life anyway, no downside to doing it in 2020. By comparison, these income tax changes and perhaps triggering tax for yourself those have bigger potential risks.

BM: Thanks Kristin, totally agree. So we look forward to hearing from you all to engage in these conversations in advance of the elections.

KA: Thanks Brian and thank you, everyone, for listening. Again, you do not have to go through all of this analysis on your own. Reach out to us, we're happy to help you through it. Thanks.

The information provided in this recording is for informational purposes only. While Choate and Choate Investment Advisors make every attempt to present accurate information, the information on this recording may not be appropriate for your specific circumstances and it may become outdated over time. The views expressed on this podcast should not be construed as advice for your given situation. If you have questions about your specific situation you should consult your attorney for legal advice and you should consult your financial advisor. Moreover, Choate Investment Advisors may decide to select investments on a different basis

© 2026 Choate Wealth | Two International Place, Suite 3000 | Boston, MA 02110 | 617-248-5000

Disclaimer: Legal advice and related services are performed by Choate Hall & Stewart LLP ("Choate"). Investment management advice is provided through our subsidiary, Choate Investment Advisors ("ChoateIA"), a SEC-registered investment advisor.

at any time and without prior notice. Finally, as everyone should know, past performance is not a guarantee of future performance.

Brian W. Monnich
Attorney | Partner

Kristin T. Abati
Attorney | Partner

© 2026 Choate Wealth | Two International Place, Suite 3000 | Boston, MA 02110 | 617-248-5000

Disclaimer: Legal advice and related services are performed by Choate Hall & Stewart LLP ("Choate"). Investment management advice is provided through our subsidiary, Choate Investment Advisors ("ChoateIA"), a SEC-registered investment advisor.