

Estate Planning Update

Winter 2020-2021

The following is a summary of some estate planning developments and opportunities that may be of interest to you. We hope you find this helpful and look forward to hearing from you with any questions.



Recently many of our clients have been making or planning substantial gifts to use their gift and estate tax exemptions. Many also were considering how best to utilize the generation-skipping transfer tax exemption. One motivating factor has been anticipation of a decrease in these exemptions. 2017 tax legislation doubled these exemptions temporarily, resulting in exemptions of \$11.58 million (\$23.16 million for a married couple) in 2020, increasing with inflation to \$11.7 million (\$23.4 million for a married couple) in 2021. The exemptions will continue to increase with inflation through the end of 2025, but will then be cut approximately in half beginning in 2026.

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President-elect Joseph R. Biden has called for either reducing these exemptions to where they stood under prior law, cutting them approximately in half, or reducing them even further. If Congress makes these changes, the result will be a multimillion-dollar reduction in the amount that can be given away during life, or transferred at death, free of gift or estate tax. In order to capture the full benefit of the current exemption, it would have to be used before the effective date of any reduction. There has been speculation that Congress could make tax changes retroactively, with an effective date as early as January 1, 2021.

As of this writing, it seems clear Democrats will continue to control the House of Representatives. However, control of the Senate is still uncertain, pending the outcome of two special elections in Georgia in early January. If Democrats prevail and

*You can access the online version of this *Estate Planning Update*, with links to other articles, at bit.ly/EPUNTR2020. Or, to access a particular article mentioned in this *Update*, type in the web address shown—for example, to see the article “Estate Planning Necessities and Opportunities in Today’s Environment” from our Summer 2020 *Update*, which is mentioned on page 2, type “bit.ly/EPUSUMMER2020PG1” into your internet browser.

gain a Senate majority, they could potentially reduce the exemptions or make other tax law changes without Republican cooperation. It is impossible to predict whether changes will be made, or when, but even under existing law the increased exemptions are only temporary.



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Lifetime gifts can provide substantial tax and nontax benefits, whether exemptions decrease in the near future or not. Accordingly, it makes sense to consider your options for making gifts in 2021. There are many good estate planning opportunities in times of low interest rates and market volatility. There is also a need now, as always, to review estate plans. For more information about these possibilities, see our Summer 2020 article, “Estate Planning Necessities and Opportunities in Today’s Environment” (go to bit.ly/EPUSUMMER2020PG1).

Please contact your Day Pitney estate planning attorney to discuss gifting opportunities or a review of your estate plan. ■



The goal of impact investing is to achieve good monetary returns while having a positive impact on society. This article explains how investors can define and measure the social returns of impact investing. It is not always clear how to determine the social impact of an investment. There is no single agreed-upon measure, and measurement must be personalized, because the social impact of an investment is directly related to the individual investor’s goals.

There are two core principles of impact investing: (i) understanding the type of outcome desired (e.g., investors differentiate between the impact of a product itself and the impact of a company’s operations); and (ii) using frameworks and metrics to measure the outcome (rather than the output) of investments.

This article, the first of a series, provides a general overview of how to develop an impact investing strategy by defining investment goals and measuring the social impact of investments.

What Is Impact Investing?

The term “impact investing” is generally understood to represent seeking returns on investments while generating positive outcomes for society. The phrase “impact investing” was first introduced in the 2000s by The Rockefeller Foundation. At the same time, the Global Impact Investing Network (GIIN) was launched. GIIN is a nonprofit advocacy group that has grown

to become a key authority on impact investing. GIIN defines impact investments as “investments made with the intention to generate positive, measurable social and environmental impact alongside a financial return.”[1]

Differences From Other Investment Strategies

Impact investing is used somewhat interchangeably with environmental, social and governance (ESG) integration and sustainable or socially responsible investing. Although these terms mean different things to different people, there are commonalities among them.

ESG integration is defined as “the explicit and systematic inclusion of ESG issues in investment analysis and investment decisions.”[2] Sustainable or socially responsible investing refers generally to the practice of implementing a “negative screen” to filter out certain sectors deemed by the investor to be harmful (e.g., tobacco or firearms) and investing in efforts that promote social good in addition to financial returns.

ESG integration and impact investing are both more rigorous forms of sustainable or socially responsible investing. What distinguishes impact investing from other forms of socially responsible investing is the investor’s emphasis on measurement. The impact investor prioritizes targeted investments with a measurable social outcome, whereas ESG integration is an investment strategy premised on the belief that material ESG factors can be indicative of a company’s long-term performance. Impact investing, ESG integration and sustainable or socially responsible investing are complementary and can be combined.

Defining Investment Goals

The first step of impact investing is to choose whether to pursue an “impact first” or “financial first” investing approach. An impact first approach prioritizes the achievement of a specific social or environmental goal over financial return, whereas the primary goal of a financial first approach is to achieve a high monetary return on investment.

The second step is to determine the social causes or issues to address through investing. Impact investments span numerous sectors, asset classes and geographies, and they can be made in for profit businesses, nonprofit organizations or investment funds. Once an investor defines his or her goals, the investor must research and identify investment opportunities that align with those objectives.

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Measuring the Social Returns on Investments

It is often difficult to determine how to measure the social impact of an investment in a way that is both understandable and meaningful. Notwithstanding that hurdle, an investor’s ability to assess the performance and progress of an investment is a hallmark of impact investing.[3] This exercise may be broken down between measuring product impact and operational impact.

A real-world example of product impact is Maven Clinic, a telehealth company that uses its technology to address a societal need, “the gaps in care that women and couples face, particularly around fertility, pregnancy, and postpartum care.”[4]

An example of operational impact is 4Ocean, which removes one pound of trash from oceans and coastlines for each bracelet (made from such trash) sold. Although the 4Ocean bracelet does not necessarily

better society, the company's practice of funding ocean trash removal through the sales of bracelets has made a significant environmental impact.

An investor's approach to impact measurement is usually tailored to the particular investment goals. For example, the mission of the Calvert Social Investment Foundation, Inc. is to maximize the flow of capital to disadvantaged communities in order to create a more equitable and sustainable society. One investment made by the Calvert Foundation was in Craft3, a nonprofit, non-bank community development financial institution with a mission to strengthen economic, ecological, and family resilience in Pacific Northwest communities of the United States. To measure the performance of its investment, the Calvert Foundation uses the following metrics:

- Board of directors: female
- Board of directors: minority/previously excluded
- Financed enterprises owned or controlled by women
- Financed enterprises owned or controlled by minorities
- Jobs created (in financed enterprises)
- Jobs maintained (in financed enterprises)
- New lending volume

Measurement tools available to impact investors include (i) GIIN's Impact Reporting and Investment Standards, which is a set of industry-recognized metrics that measure the social, environmental, and financial performance of investments; (ii) the Sustainable Development Goals, consisting of 17 interrelated global goals that provide a framework for investors to measure social and environmental impact, developed by the United Nations; and (iii) the Global Impact Investment Rating System developed by B-Lab, a nonprofit organization that certifies benefit corporations and promotes the benefit corporation structure, among others.

Credible and accurate impact measurement remains one of the challenges of impact investing "due mostly to the expense of gathering data, the extended time horizons of addressing social issues, the many types of impact to be had, and the messiness of predicting human behavior." [5] One solution is to invest in an impact investment fund, in which case the investor relies on reports by the fund to determine the impact of his or her investment.

Getting Started

Impact investing may require more research, analysis and deliberate action on the part of the investor than traditional investing. If an investor is willing to do the work, adopting an impact investing strategy may afford the opportunity to "do well by doing good." ■

This article first appeared in the *Day Pitney Generations Newsletter*. If you would like to receive our new newsletter in the future, sign up at bit.ly/SUBDPGEN.

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- [1] Global Impact Investing Network, "What You Need to Know About Impact Investing" (go to bit.ly/GIINIMPACT).
 - [2] Principles for Responsible Investment, "What is ESG integration?" (go to bit.ly/PRIESGX).
 - [3] Global Impact Investing Network, "What You Need to Know About Impact Investing" (go to bit.ly/GIINIMPACT).
 - [4] Maven Clinic (go to bit.ly/MAVENCLINIC).
 - [5] *Forbes*, "Investing's Final Frontier: Impact Measurement" (go to bit.ly/IMPACTMEASURE).



You may wish to take a second look at these articles we have published over the past year, which contain important information for many of our clients.

“Estate Planning Necessities and Opportunities in Today’s Environment” (go to bit.ly/EPUSUMMER2020PG1) discusses how to review your current estate planning documents as well as the gifting opportunities presented by volatile markets and low interest rates.

Moving to a new state can allow you to reduce your state income tax and state estate tax burden if appropriate steps are taken. “Breaking Up Can Be Hard: Moving to a Lower-Tax State” (go to bit.ly/EPUWINTER2019PG1) discusses the requirements for changing residency and domicile.

Travel limitations and working from home under COVID-19 can also have an impact on your income tax obligations, as discussed in “COVID-19 May Impact State Statutory Residency Planning” (go to bit.ly/DPC19STATRES).

Planning with IRAs, 401(k)s and other retirement assets was affected by the SECURE Act, which went into effect January 1, 2020. We discussed the changes in “Retirement Account Planning May Need to Be Reviewed Because of New Law” (go to bit.ly/EPUJAN2020). ■



Each year, certain federal gift, estate and generation-skipping transfer (GST) tax figures are subject to inflation adjustments:

- For 2021, the annual exclusion amount for gifts remains at \$15,000. The annual exclusion amount for gifts made to a noncitizen spouse in 2021 increases to \$159,000 (from \$157,000).
- The federal gift, estate and GST tax exemption amount for gifts made in 2021 and decedents dying in 2021 increases to \$11.7 million (from \$11.58 million in 2020). These exemption amounts apply to U.S. citizens and those domiciled in the United States.

There are changes to exemptions in two of our footprint states as well:

- The Connecticut gift and estate tax exemption for gifts made in 2021 and decedents dying in 2021 also increases, to \$7.1 million (from \$5.1 million).
- The New York state estate tax exemption for decedents dying in 2020 increases with inflation each year. As this newsletter goes to press, the 2021 exemption has not been announced—it was \$5.85 million in 2020.

Note also some changes to retirement plan contribution limits:

- The contribution limit for 401(k) and similar plans remains unchanged at \$19,500. The limit for catch-up contributions to such plans for people over age 50 also remains unchanged at \$6,500.
- The limit on annual contributions to IRAs remains unchanged at \$6,000, with the IRA catch-up contribution limit remaining \$1,000.
- For further information on retirement plan contribution limits, see our alert, “IRS Publishes 2020 Pension Plan Limitations” (go to bit.ly/2021PensionLimits).

An individual who gives up U.S. citizenship or long-term residence status may be subject to a mark-to-market tax on the deemed sale of all assets and to other adverse tax consequences, if the individual’s net worth is more than \$2 million or if average annual income tax liability is above certain thresholds. A certain amount of gain is excluded from the mark-to-market tax. Note these changes:

- The income tax threshold for triggering covered expatriate status increases to \$172,000 in 2021 (from \$171,000).
- The excluded gain under the mark-to-market tax increases to \$744,000 (from \$737,000). ■



Throughout 2020, Day Pitney remained committed to our diversity and inclusion efforts. This year, we continued support of GLBTQ Legal Advocates and Defendants (GLAD) by sponsoring their annual Spirit of Justice award gala, held virtually. The GLAD gala raised \$808,898 to support their work, including its strategic litigation, public policy advocacy and education aimed toward creating a just society free of discrimination based on gender identity and expression, HIV status and sexual orientation. Day Pitney attorney and Vice President of the GLAD Board of Directors, Darian Butcher, attended the virtual gala, accompanied by other Day Pitney attorneys.

Day Pitney was also recognized in 2020 Working Mother Best Law Firms for Women, which celebrates the firms that are most successful in their efforts and results in utilizing best practices in retaining and promoting women lawyers. Determination of ranking includes questions about female representation, women’s initiatives, workplace culture, networking, flexibility, mentoring, compensation, paid time off and parental leaves, development and retention, partnership and advancement. Day Pitney’s ranking includes an Overall rank of 48, a Female Representation rank of 22 and a Support for Women’s Advancement of 10, all out of 60 firms. ■



Thanks to you, Day Pitney's estate planning group continues to be recognized for its skills and reputation in the field. We appreciate you entrusting your important matters to us, and we take great pride in delivering our very best work to you.

Chambers High Net Worth recognized Day Pitney and 16 Day Pitney attorneys for private wealth law in the 2020 *Chambers High Net Worth* guide. The guide covers private wealth management work and related areas around the world, featuring in-depth editorials about the leading professional advisers to wealthy

individuals and families in each market. Day Pitney was again ranked in the Nationwide Eastern Region, as well as in Connecticut, Massachusetts, New Jersey and New York, marking the firm as one of only two law firms to receive Band 1 rankings in Connecticut, and is tied for the most attorneys ranked in the state.

Chambers and Partners also shortlisted Day Pitney as USA Private Client Team of the Year – East Coast. The shortlists were drawn up by the Specialist *Chambers High Net Worth* research team, drawing on the guide's market-leading, in-depth research, and cover categories from traditional private client work to family law, residential real estate and luxury assets.

The Family Wealth Alliance gave attorney Alexis Gettier the 2020 Young Professionals Award, which honors professionals under 40 who are shaping the family wealth industry, rising stars who have demonstrated success in their careers and made significant contributions to the industry.

Citywealth Powerwomen Awards shortlisted attorney Sarah Jacobson for the Woman of the Year – Future Leaders – Associate award. The shortlist is based on submissions, judges' recommendations and editorial research. ■

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