DAY PITNEY LLP

Fall 2020

Day Pitney is proud to launch Generations, our e-mail newsletter with legal insights for the family office community. You are receiving this newsletter because you are a valued member of our family office network. This newsletter will be a supplement to our ongoing Family Office Investing Series™ programming, including our annual Palm Beach Family Office Forum, and our recently launched Family Office Lifestyle Series™. It is a way for us to keep in touch and share our knowledge and perspectives with you. Similar to our live events (in-person and virtual), our Generations newsletter will cover topics addressing the opportunities, challenges and risks facing family offices, their principals and their businesses.

I can think of no better way to kick off our inaugural issue than with an interview of Malcolm Gosling, President & C.E.O. of Goslings International Ltd., discussing the keys to successfully sustaining a family business for multiple generations. Goslings is an eighth-generation family business that is the world-renowned producer of Goslings Black Seal Rum and Goslings Stormy Ginger Beer. Following up on our recent Palm Beach Family Office Forum, we have also included articles discussing the potential impact of the upcoming U.S. election on estate taxes and federal income taxes.

We hope you enjoy this first issue. If you have any questions on the topics covered here or any related family office topics, please feel free to reach out to any of the members of our Family Office team. We welcome your feedback and suggestions on topics for future installments.

Best regards,

R. Scott Beach

Chair of Day Pitney's Corporate and Business Law Department and Head of Family Office Practice

GOSLINGS RUM: THE SECRETS OF KEEPING A FAMILY BUSINESS TOGETHER FOR EIGHT GENERATIONS

Written by: Daniel L. Gottfried

On August 13, Day Pitney's Family Office Practice Group hosted a private virtual tour of the Goslings Rum production facility in Bermuda. The tour was moderated by Dan Gottfried, who chairs our International Transactions and Tax practice groups. Day Pitney guests had the pleasure of a real-life Dark 'n Stormy® cocktail mixology session with Andrew Holmes, Goslings' brand director, and listening to Malcolm Gosling, President & CEO of Goslings International Ltd., discuss his family business and the secrets of keeping it together for eight generations.

Below is an excerpt from the conversation, edited for length and clarity.

Daniel Gottfried (DG): Can you tell us how Goslings got its start?
Malcolm Gosling (MG): In the late 1700s, my five-great-grandfather had a liquor store in London. He decided to expand to the New World. In 1806, he chartered a ship named the Mercury and loaded it with 10,000 pounds sterling worth of wines and spirits. Being the brave guy that he was, he stayed back in London and put his son James on board. After 90-plus days at sea, the charter ran out and the ship was nowhere near its destination, Virginia, but it was close to a little rock in the Atlantic, which was Bermuda. James was unceremoniously dumped off in Bermuda, with a lot of booze but not much money. He decided to sell some of his wares. Not 100 yards from where he was unloaded, he was granted a license to sell liquor, which would have basically been four to five varieties of wines, port, sherry, whiskey and

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You can access the online version of this *Generations* article, with links to other articles, at bit.ly/DPGosling. Would you like to receive the *Day Pitney Generations Newsletter* directly via email? Sign up here.

cognac. Two years later, his brother Ambrose joined him with the next boatload. We have been here ever since.

We started bringing in other products from around the world. Today, we import, wholesale and retail over 3,000 different SKUs of wines and spirits. We are Bermuda's oldest business and 100% family owned. I am the seventh generation, and the eighth generation is heavily involved in the business, which is exciting.

DG: Your most popular rum is the Black Seal, and that is your logo, as well. Tell us where that came from.
MG: We started importing different distillates from the Caribbean and experimenting with aging and blending. This one, they said, tasted like fine old rum, so they called it Old Rum. The only way you could buy it was by taking your own vessel into one of our retail stores and getting a fill up out of the bar. This is in the 1850s and this continued on all the way to the 1920s. Tourism was starting to develop in Bermuda, so Goslings decided to put the rum in a bottle.

But where did we get the bottles? Well, we would sell champagne to the British Navy, who were always very good customers. In the early days, they would do frequent stops. Bermuda was a strategic location and eventually the British Navy had a base located in Bermuda. We would sell them champagne and bring back the empties. We rinsed the bottles out, put the Old Rum in, put a cork in, covered it with black sealing wax to stop leaking and put it on the shelf with no label, only the black sealing wax to distinguish it from our other blends. People would come in and say "Give me one with the black seal." Being the marketing geniuses that we were, we listened to that for about 35 years before we realized that nobody was calling it Old Rum, except us. Around 1950, my Uncle Goose created the seal balancing the barrel logo and officially renamed it Goslings Black Seal Rum.

DG: What happened to the Old Rum?
MG: The tradition continued. When I worked in a Goslings retail store, from when I was 14 right to the early 1990s, we still had the barrels of draft. Even though we sold bottled product, people would still bring their empty bottles for a fill up and save on the cost of the glass, labels, and labor. It was quite popular.
When I took over the production, we created an aging project around the Black Seal. Black Seal is perfectly aged and a most versatile spirit. It can be used in daiquiris and the Dark 'n Stormy; it has many culinary applications it is even great in cheese fondue! There is no end to what you can do with Black Seal. Although Black Seal is perfect as is, we wanted to see what this blend would be like with additional aging. We filled a few hand selected, once-used, bourbon barrels and let it age in the humid, salty, Island air that fills our aging facility. Each year we filled a few more barrels. We knew this was going to be a product that we wanted to produce one day.

> **"We are just carrying on tradition that was set by the three brothers, my dad and my two uncles. All three were award winners for their community service; they had friends around the globe. They really dedicated themselves to helping those that were not as fortunate and making sure that they took the right path, as best they could. They led by example."**
>
> Malcolm Gosling, President & CEO

You can over-age rum. When it becomes too woody, too tannic and too dry, it ruins the spirit. In 2003, we decided it was time to put what we had in a bottle. At that point to total age of each distillate in the blend ranged between 16 and almost 20 years. It took 15 minutes to come up with the concept for the packaging and the name. And that's where we developed the Goslings Family Reserve Old Rum. Covered with black sealing wax in a champagne bottle. Each bottle is hand numbered. We only bottle it once a year, and our yearly inventory usually yields 27,000 to 30,000 bottles.
DG: You are eight generations along now, which is just

exceptional. Tell us what other family members work in the business.
MG: We have six members of Generation 8 in the business. I am a great uncle, a couple of times now, so gen 9 is on its way. There is my niece Emily and my son Malcolm, who work with me on the export side, as well as our import and distribution companies. Emily is our brand ambassador for Canada. Malcolm is kind of our special forces guy. Their passion is wonderful thing to witness. For the local distribution business, I have a niece and a cousin, who is like a nephew. They are in accounting. Then, we have two other nieces that are on the marketing and supplier relations sides of our business for the local distributorship.

DG: Do you groom people for specific roles?
MG: It is quite amazing and it sounds haphazard, but it is really not. Everybody needs to understand what they can bring to the company, which is made very clear to any family member looking to join. All of their generation, all of our generation, and all of the prior six generations worked in the business before making it a full-time job. They know where their passions lie. Is it in wine? Is it in marketing? There is variety, because we have become very diversified. That requires different talents.

Four out of the six have had outside experience. The accountants have worked for two major accounting firms. Emily was a teacher at a private school in Canada. My son worked at Polar Beverages to learn about the non-alcohol side of our business. We encourage the next generation to bring new ideas into the company. Every member of this family is super passionate about being a member of the company. It is wonderful.

DG: Your family has such an incredible legacy. I know you have such strong values. How do you preserve and pass those down through the generations?
MG: There is no other way than how it was passed to me. If you take a look at the sixth generation, my dad and his two brothers, it was all about service to others and, first and foremost, respect. They worked in one big office and they got along so well. The family values extend to everybody that gets involved which is centered around respect, honesty and hard work.

My generation just passes that on and makes sure that the next generation understands that it is our name on the bottle. It is something that is almost unsaid. We are just carrying on tradition that was set by the three brothers, my dad and my two uncles. All three were award winners for their community service; they had friends around the globe. They really dedicated themselves to helping those that were not as fortunate and making sure that they took the right path, as best they could. They led by example.

We try to do the same thing. We work to get people to come to Bermuda to help the community by bringing in visitors and opportunities. I have been doing a lot of that. My cousin Charles is the mayor of Hamilton. Nancy sits on many charitable boards.

DG: Tell us about your governance structure. How does your company work?
MG: We have our holding company Goslings Brothers Limited, which wholly owns Goslings Limited, our local distributorship, and Goslings Export, our maker and exporter of all the Bermuda-made products. There is one board, a small board. The board controls everything for all the companies. Currently, we are setting up mini boards for each company, because our businesses are diversified. The production, product innovation, exporting and all the logistics that go with exporting, bottling overseas, marketing overseas. They are different businesses along the supply chain, even though you are selling spirits the level at which you are involved requires a specific skill set.

DG: Are all members on the board family?
MG: No, we have one non-family member, Elis Frazzoni. Tremendous guy, but he is going to be retiring soon. We have our Class A trust shares. They are nontransferable, non-voting, shares held in reserve for non-family board members. He gets the value of those shares while he holds them, but when he leaves the company they come back into the fold. The company is entirely family owned but the benefits of a non-family member on the board helps us grow.

DG: In the eight generations that your family has been running this business, there has been considerable consolidation in this industry. How have you managed to remain independent?
MG: Never put it out that you are for sale. We have had inquiries, but the interest really has not been there. The consolidation continues and there is always room for smaller brands to grow and maintain, but it gets a little bit more difficult, from the cost perspective to making sure you are heard above the noise.

Goslings Black Seal is special, though. It is synonymous with Bermuda and Bermuda's heritage. It is part of the culinary culture. Bermuda fish chowder is as popular as Dark 'n Stormy, and they use a lot of Goslings Black Seal in its making. No matter where you eat Bermuda fish chowder, you will get either a bottle or a cruet set of Goslings Black Seal Rum at the table. It is part of our culture and the Dark 'n Stormy is our national drink. It is something that we owe to Bermuda to preserve. We are an employer for Bermuda. That matters, especially now.

DG: For a liquor brand, you have an interesting trademark portfolio, and one big piece of that is the Dark 'n Stormy. Tell us about that trademark.

Malcolm Gosling 7th generation rum maker, a.k.a Papa Seal, doing what he loves most. #goslingsrum

MG: In the 1920s the British Navy had their own ginger beer factory in Bermuda. They decided the ginger beer needed a little extra kick, so they added our Old Rum. It is written in a history book that the Dark 'n Stormy was developed in Bermuda and it was the color of a cloud that only a fool or a dead man would sail under.

Bermuda does not produce much. Everything is imported. So Bermudians were very proud of how popular this drink was with the visitors in the 1960s and 70s. It sounds complicated, Dark 'n Stormy. It looks like it could be complicated, but it is very simple. Bartenders latched onto it. Our premier in the early 1980s proclaimed it our national cocktail.

When we decided that we wanted to export, we realized one brand dominated the market for dark rum. Other brands were starting to capitalize on the Dark 'n Stormy from Bermuda. We registered the name internationally in 1980. It was also a sales tool. Over the years, millions of Bermuda's visitors have been exposed to this drink. The trademark allows us to guarantee them that they will have Dark 'n Stormy experienced in Bermuda.

I often tell people, let's not get into a debate whether another rum is better or worse. The fact is it is not a Dark 'n Stormy with another rum. It is going to taste differently, because Black Seal is so unique. That is the main reason we trademarked it. Even after all these years, protecting the mark still requires a lot of time and money ensuring violations are dealt with appropriately. Initially, the trademark was the perfect rationale for an account adding Goslings to their rum portfolio. A Dark 'n Stormy is a unique and tasty intro to our rum. This makes it so important for us to effectively communicate the message that to call a cocktail a Dark 'n Stormy, it must be made with Gosling's Black Seal Rum and ginger beer.

DG: I want to talk for a moment about Papa Seal Rum. You recently released this ultra-premium rum. It is very difficult to get. It has won all kinds of awards.

MG: Papa Seal is the result of another, smaller aging program which involved unique distillates. My son's friends call me Papa Seal, but the product Papa Seal is named this because it is the father of all rums. We liquid is limited and will be for many years. The average age of the rums in it are 16 years. This magical blend is married in American White Oak barrels with a medium char. I can't get into all the secrets behind it, but wow, it's fantastic. Elegant yet complex, hints of fruit but finishes long and dry.

We only did about 12 barrels the first year. We did 15 this year. You have to sample each barrel, because you want to discover any sort of compromise in a barrel quickly, before it destroys the spirit. When it is time for bottling, in order to capture subtle differences between the barrels, we bottle one barrel at a time.

It is all done by hand. It's very laborious. ''Unfortunately we only have 261 cases allocated for the United States in 2020. It will make its way into the market by the end of October. The last one won "Rum of the Year," and this year it is even better. I do not know how they're going to rate it.

DG: You can win "Rum of the Year" twice.

MG: We'll see. ■

IMPACT INVESTING: HOW TO DEFINE YOUR GOALS AND MEASURE YOUR IMPACT

Written by: Jaclyn M. D'Esposito, David M. Waizer

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.

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."

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[1] Global Impact Investing Network, "What You Need to Know About Impact Investing."

[2] Principles for Responsible Investment, "What is ESG integration?"

[3] Global Impact Investing Network, "What You Need to Know About Impact Investing."

[4] Maven Clinic.

[5] Forbes, "Investing's Final Frontier: Impact Measurement." ■

Written by: A. Michael Wargon, Tasha K. Dickinson

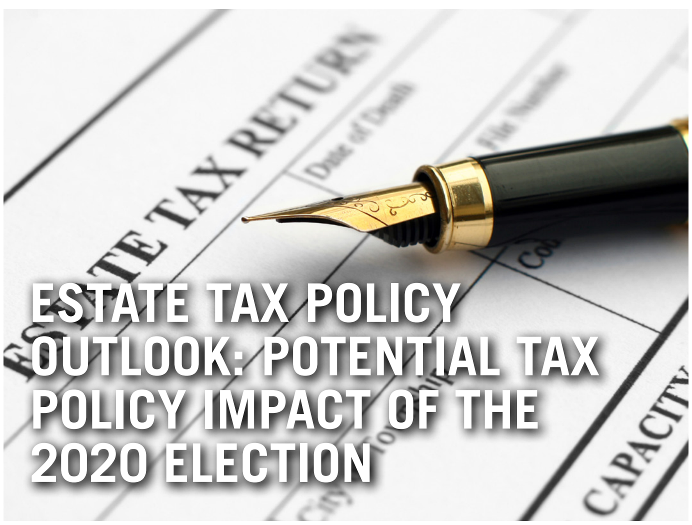
During Day Pitney's recent Palm Beach Family Office Forum, Day Pitney partner Tasha Dickinson moderated a panel including Kelly Smallridge, the president and CEO of the Business Development Board of Palm Beach County, and Day Pitney's A. Michael Wargon.

Kelly led off the presentation by discussing the explosive growth currently underway in Palm Beach County's business and financial sectors, emphasizing the aerospace industry's expansion and creation of high-paying jobs. She then mentioned the significant companies that have decided to make Palm Beach County home and how the area has become a hub for major life sciences and health care companies, including more than 15 hospitals and two world-class research institutes. Kelly highlighted the incredible growth of Modernizing Medicine and Palm Beach's assistance in fast-tracking Amazon's newest fulfillment center expansion in Boca Raton. Thanks to the local tax and regulatory climate, many of the world's foremost investors and hedge fund principals call Palm Beach home, and they have brought their financial operations with them, earning Palm Beach the moniker of "Wall Street South."

Tasha then turned the panel over to Michael to discuss why many successful clients have moved to Florida and how state and local tax changes are currently driving their exodus, particularly from the Northeast. Michael outlined why this trend will bring increased enforcement and why clients moving to Florida can expect audits from the revenue departments of the states they are leaving. Michael discussed some of the widespread misconceptions held by clients when considering the domicile and statutory residency tests applied by many states.

With regard to the statutory residency test, which generally requires access to a permanent place of abode and 183 days or more spent in a state, taxpayers need to recognize that even one minute of a day spent in a state may count as a full day and could cause day counts to exceed 183 days in a year. Unrestricted access to a permanent place of abode is, for these purposes, equivalent to owning or renting a property. With regard to the domicile test, Michael discussed the limited benefits of checklists and how taxpayers need to prove to the state that they have left by providing clear and convincing evidence that they have changed domicile. A qualitative analysis of the home factor, a renewed look at a client's business structure, careful attention to day count, and the location of items "near and dear" all are important concepts to consider when analyzing domicile. Michael offered some very helpful tips for clients facing a domicile audit. These included the hazards of careless conversations, the importance of record keeping (including the use of day-tracking apps), and the advisability of moving and restructuring existing trusts and single-member LLCs.

Tasha then shifted the discussion to focus on COVID-19-specific issues and how they have impacted the local business community. Kelly noted that Palm Beach is busier than ever and has continued to experience exponential growth, despite the fact that the pandemic has hobbled businesses and governments around the country. Michael then discussed some of the more interesting developments and client questions arising in the state tax context as a result of COVID-19 and its related consequences. He discussed the improbability of a temporary move to a vacation home being viewed as a change of domicile and how travel bans and quarantines might impact one's residency analysis. He also addressed nexus and state income tax issues generated by taxpayers working remotely. Tasha then addressed the impact of the upcoming election and how that might affect domicile decisions. Kelly offered her thoughts on whether the upcoming elections might change the trajectory of the region. She believes a change in administration might faintly slow the flow of new residents, but the existing infrastructure and business climate will continue to entice companies and high net worth taxpayers. Michael discussed some of the potential tax policy changes we might expect to see if there is a change in Congress and the White House, including a lowered estate tax exemption and credits for state estate taxes paid and how those changes may impact domicile and residency planning. Moreover, the current administration has made clear that they are not interested in alleviating state budget shortfalls, forcing states with revenue deficits to resort to tax increases and other punitive measures. A continuation of this fiscal policy for a second term will almost certainly drive wealthy clients, an extremely mobile populace to begin with, to low-tax states like Florida. For taxpayers concerned that Palm Beach has already reached its zenith, Kelly maintains that there are still plenty of significant development and expansion opportunities available and the best is yet to come. ■



ESTATE TAX POLICY OUTLOOK: POTENTIAL TAX POLICY IMPACT OF THE 2020 ELECTION

Written by: Jennifer M. Pagnillo

At Day Pitney's Palm Beach Family Office Forum, Day Pitney partner Daniel L. Gottfried moderated a panel providing insights with respect to possible federal tax policy changes in light of the upcoming presidential election.

There was general agreement that the election will have a key impact on tax policy, as a Democratic sweep could mean broader tax policy changes that could result in tax increases. Julio Castro, a partner at Evercore Wealth Management, noted that, even with a Trump victory, estate tax repeal is not likely in the near future because of the growing federal deficit, which has been magnified by the government's COVID-19 response. In the event of a Trump victory, we may see more revenue generation legislation, like the recent SECURE Act which impacted retirement plans, even if there are no tax rate increases, as a move to reduce the federal deficit. On the other hand, Vice President Biden has not provided much detail on his plans for the federal estate tax, other than to say that he intends to "return to historic norms." However, his proposal to eliminate the step-up in basis at death for inherited assets would represent a significant departure from historic norms. As far as whether he would do this through triggering a tax on asset appreciation at death or requiring a carried-over tax basis for inherited property remains to be seen.

Under current law, the federal gift and estate tax exemption is \$11.58 million in 2020 and is scheduled to increase for inflation each year until the end of 2025, when it will sunset back to \$5 million (indexed for inflation). Vice President Biden has indicated he will completely or partially repeal President Trump's 2017 tax cuts, and this could mean accelerating the sunset of the exemption, possibly to 2021. Alternatively, this could mean reducing the federal estate tax exemption to \$3.5 million and the gift tax exemption to \$1 million, levels that were in effect during President Obama's first term.

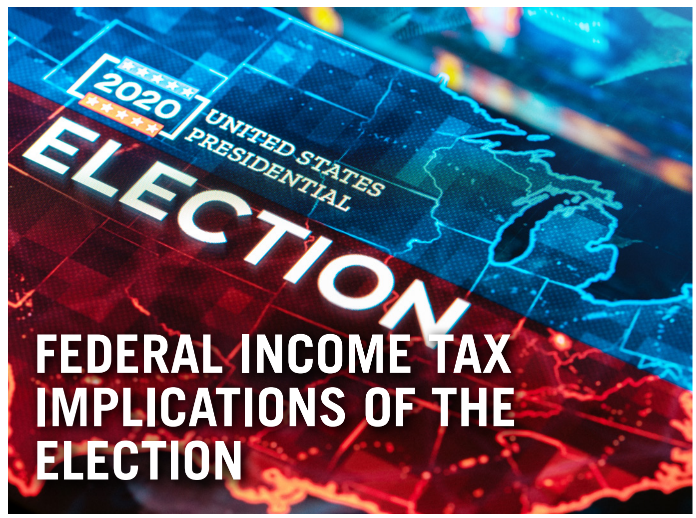
Because of the uncertainty as to what may happen with the federal gift and estate tax exemptions in 2021 and beyond, many families are looking to make major gifts before the end of the year, in order to use exemption amounts that might otherwise be lost in the event of a Democratic sweep. Transactions entered into in 2020 are likely to be "safe" under the anti-clawback rules, meaning that any retroactive changes in tax legislation must be "modest" in order to be constitutional. Most observers believe this means that significant changes to these laws made after 2020 cannot be effective earlier than the beginning of 2021.

In order to gain the benefit of the increased exemption amount, gifts must be made in excess of the anticipated reduced exemption amount. Thus, if you expect that the exemption amount will be reduced to $5 million, you must make gifts in 2020 that will put your lifetime gifts above $5 million in order to use that excess exemption. (Residents of Connecticut need to be aware that Connecticut has its own gift tax, with a significantly lower exemption amount.) Because of the size of these potential gifts in 2020, a donor should carefully consider the options and ensure that he or she will not have need for those funds after making the gift. Married donors might consider establishing a spousal lifetime access trust, or "SLAT," to receive a significant gift. In this way, the funds would be available to the donee spouse as a beneficiary of the trust, if needed. Unmarried donors might instead establish a domestic asset protection trust. In this structure, a donor can transfer assets to an irrevocable trust for the donor's benefit and still fully utilize his or her exemption. These trusts require careful structuring and drafting, so it is important to have good legal advice before entering into one of these transactions.

Given historically low interest rates, there are some other estate planning strategies to consider. Intra-family loans can shift appreciation of assets in excess of the federally required minimum interest rate to a beneficiary with no transfer tax cost. In this strategy, a senior family member lends funds to a junior family member (or to a trust for a junior family member's benefit) in exchange for a promissory note bearing interest at the federally required minimum rate (which can be as low as 0.14 percent for a three-year loan made in October 2020). The junior family member (or trust) re-invests the loan proceeds so that any appreciation in value in excess of the rate of interest on the loan shifts wealth to the junior family member (or trust), free of transfer tax.

Another strategy that benefits from low interest rates is a grantor retained annuity trust, or "GRAT." In this structure, a donor transfers property to a trust that by its terms pays an annuity back to the donor over a period of time, which is a minimum of two years. The annuity can be structured so that the actuarial value of the annuity is equal to the value of the property transferred to the trust, plus interest at the federally required interest rate (0.4 percent for a GRAT funded in October 2020). In this way, the donor makes no taxable gift on funding the GRAT. Any appreciation in excess of that federally required rate will pass to the donor's beneficiaries at the end of the term of the GRAT, without any transfer tax. If the assets in a GRAT appreciate early in the GRAT term, the donor can lock in this appreciation by substituting other assets for assets held by the GRAT on a tax-free basis.

In order to implement any of these planning strategies in 2020, it is important to start sooner rather than later, to have sufficient time to consider and implement the plan. ■



FEDERAL INCOME TAX IMPLICATIONS OF THE ELECTION

Written by: Gene Schlack

On October 1, Day Pitney held the third installment of its annual Palm Beach Family Office Forum, with a panel of experts discussing the potential tax implications of the upcoming election. The panel was moderated by Daniel L. Gottfried, chair of Day Pitney's Tax and International Transactions groups, who was joined by Amanda Agati, Chief Investment Strategist at PNC Financial Services Group, Adrian Alfonso, a principal at Kauffman Ralston, and Julio Castro, a partner at Evercore Wealth Management.

In general, there was a consensus that there is little likelihood for substantial change in tax policy absent a Democratic sweep of the House, Senate, and Presidency. Of course, overshadowing the entire conversation was the ongoing COVID-19 pandemic. Ms. Agati was quick to note that regardless of the outcome of the election, for the short term it was likely that the ongoing economic impact of the pandemic would slow down the pace of tax reform by a potential Biden administration, for fear that such reform—in particular, tax increases—could stall economic recovery.

Among Mr. Biden's proposals are an increase in the top marginal tax rate back to the pre-Tax Cuts and Jobs Act rate of 39.6 percent, up from the current rate of 37 percent, taxing long-term capital gains and qualified dividends at ordinary income rates, capping tax benefits for itemized deductions, increased employment taxes (both to the employee and the employer), and phasing out the qualified business income (QBI) deduction. However, it is not all about tax increases for Mr. Biden, as he is also in favor of restoring deductions for state and local taxes, which is a very popular tax issue with residents of states in the Northeast.

If Mr. Biden should win the Presidency and succeed in implementing his tax proposals, there could be income tax increases for higher-income individuals. Specifically, his proposals target individuals with income over $400,000, but, as Mr. Alfonso noted, it is not clear whether that $400,000 figure is adjusted gross income, taxable income, or modified adjusted gross income.

On the corporate side, Mr. Biden has proposed increasing the corporate tax rate from 21 percent to 28 percent and doubling the minimum tax paid by U.S. shareholders of controlled foreign corporations under the recently enacted GILTI regime from 10.5 percent to 21 percent.

Mr. Biden is also interested in making changes to the tax treatment of retirement savings. Whereas under current law, qualified contributions to retirement savings plans are deductible for tax purposes, Mr. Biden has proposed providing a 26 percent refundable tax credit instead, with the intention of equalizing the tax benefit of making retirement contributions regardless of the taxpayer's marginal income tax benefit. While such a change might be beneficial to lower-income taxpayers, taxpayers in tax brackets above 26 percent would see the tax benefits of retirement savings decline.

In contrast, Mr. Trump's income tax policy goals have largely been implemented by the Tax Cuts and Jobs Act, enacted in 2017. However, since many of the provisions of that Act are scheduled to sunset in 2026, if Mr. Trump is reelected, his priority will likely be to make those changes permanent. ■

ALEXIS GETTIER RECOGNIZED BY FAMILY WEALTH ALLIANCE

The Family Wealth Alliance selected Alexis Gettier, a partner at Day Pitney LLP, to receive a 2020 Alliance Young Professionals Award. The award honors professionals under 40 years old who are shaping the family wealth industry, rising stars who have demonstrated success in their careers and made significant contributions to the industry.

"I have been a trust and estate lawyer for 11 years. There is so much I find rewarding about this job. I cherish the trust my clients place in me," said Gettier at the Alliance Virtual Fall Forum on October 23, where the twenty-five honorees were announced and gave video acceptance speeches.

"We are very proud of Alexis, and this recognition is well deserved. She excels in her day-to-day role, handling complex and sensitive matters for our firm's clients and their families," said R. Scott Beach, head of Day Pitney's Family Office practice and chair of the firm's Corporate and Business Law department. "Alexis and the rest of our team are relentlessly client-focused and deeply committed to providing the highest quality of legal services to our private clients and family offices, both in the U.S. and internationally."

Gettier assists high net-worth individuals, including same-sex married and unmarried couples, with tax and estate planning. She also counsels them on the structuring of gifts and planning for business succession. Gettier also advises families and fiduciaries in the administration of complex estates and trusts. In addition, she handles estate planning and administration for individuals with substantial art portfolios, including collectors, investors and artists.

Gettier earned her B.A. from Wake Forest University; her J.D., *cum laude*, from Temple University; and her LL.M. from New York University. She is admitted to the bar in Connecticut, New York and New Jersey.

The Family Wealth Alliance also kicked off their Young Professionals Network (YPN) at the Fall Forum, exclusively for professionals under forty years old in the family wealth industry. All winners were invited to join YPN, which will begin with small peer groups at the Forum to network, discuss challenges and plan new Alliance initiatives.

A full list of the 2020 Alliance Young Professionals Award recipients can be found here. ■

About Day Pitney's Family Office Practice

Day Pitney routinely represents family offices and their executives and family principals in a wide variety of complex matters. Our family office clients, which are U.S. and international, have significant investable assets spread globally across numerous asset classes.

Day Pitney is a full-service law firm with almost 300 attorneys in Boston, Connecticut, Florida, New Jersey, New York, and Washington, DC. The firm offers clients strong corporate and litigation practices, with experience on behalf of large national and international corporations as well as emerging and middle-market companies. With one of the largest individual clients practices in the country, the firm also has extensive experience helping individuals and their families, fiduciaries and tax-exempt entities plan for the future.

Please visit our website to learn more about our Family Office Practice, our Family Office Investing Series™ and our Trusts and Estates and Individual Clients department.

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ACCOLADES & AWARDS*

Named “Best Law Firm – Estates and Trusts” category (2020) and “Highly Commended” in categories for “Best Private Client Law Firm” (2017 and 2019) by *Private Asset Management* (PAM)

Named “Law Firm of the Year” by *Family Wealth Report*, 2017

Named a Family Office “Industry Awards” Finalist in the “Client Initiative” category by *Wealth Management*, 2017 & 2019

Finalist in “Accounting, CPA or Law Firms Serving Family Offices” category for Family Wealth Alliance Best in the Industry Awards, 2018

Shortlisted as USA Private Client Team of the Year – East Coast, 2020 and ranked Nationwide, and Band 1 in CT and MA, in Private Wealth Law by *Chambers HNW*, 2016-2020

*Attorney Advertising. No aspect of this advertisement has been approved by the highest court of any state. Prior results do not guarantee a similar outcome.
See Awards Methodology on www.daypitney.com.

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