



NIGHT & DAY: HIGH-NET-WORTH FAMILIES & FAMILY OFFICES

By **Kim Kamin**

A Time for **Creativity** and Action

Another busy year for family offices

Overall, 2019 was a year that focused significant attention on the wealthiest Americans and kept the estate-planning community heavily engaged in planning activities.

Increasing Concentration of Wealth Studies in 2019 focused on the concentration of wealth in the United States, finding that the wealthiest 10% of households now represent 70% of all wealth (up from 60% in 1989), and the top 1% now hold 32% of the wealth (up from 23% in 1989).¹ As a corollary, *Forbes* reported in March 2019 that in the United States, there are now a record number of billionaires—607.² Such reports evidence the increased demand for advisors who have the expertise and skills to handle the unique planning needs associated with significant wealth.

TCJA Implications

The Tax Cuts and Jobs Act of 2017 (TCJA) became effective Jan. 1, 2018, but it wasn't until 2018 returns were filed in 2019 that clients realized its true impact. Many ultra-high-net-worth (UHNW) clients had rejoiced when new income tax rules went into effect, raising cut-offs for top brackets and reducing the top marginal rates from 39.6% to 37%. But, the mood sobered for those in states that impose an income tax and/or have high property taxes when they felt the pain of reduced state and local tax deductions—now limited to only \$10,000 for all itemized state and local taxes.³

For families in high income states who hadn't yet changed their state of residence, 2019 was a year of transition, as many moved to states with no estate tax and lower or no income tax. For clients with operating businesses in high tax states, it was a year of considering relocating those businesses as well.

Many clients with multiple homes began to reconsider the cost-benefit analysis of continuing to own personal residences in locations with high property taxes, and many faced stagnant or declining real estate markets as they sought to offload their extra residential properties.⁴

Other new provisions of the TCJA created significant chatter and planning, particularly the Opportunity Zones (enabling deferred and preferential capital gains treatments when investing within designated low income census tracts) and the new Internal Revenue Code Section 199A deductions (permitting income tax deductions of up to 20% of qualified business income), as those who could sought to take advantage of these new opportunities to reduce current and future income tax liabilities.

Elevated Transfer Tax Exemptions

With tax reform in 2018, planning professionals required some time to educate themselves on the changes, and many UHNW clients spent that year digesting the new rules under the TCJA. Having done so, 2019 was a year of action as clients implemented gifting strategies and completed the design, execution and at least partial funding of new trusts.

The elevated gift and generation-skipping transfer tax exemptions (now \$11.58 million per individual and indexed for inflation) are set to sunset at the end of 2025. However, some clients worry this gifting window



Kim Kamin is a principal at Gresham Partners, LLC in Chicago



may close sooner than scheduled thanks to proposals like Senator Bernie Sanders' (D. Vt.) bill, titled "For the 99.8% Act," which proposes to reduce exemptions back down to \$3.5 million/\$1 million as of Dec. 31, 2019.⁵ Some clients have postponed fully using their current exclusions and funding trusts pending the results of the 2020 elections, which may portend a very hectic year-end for planners.

In 2019, with the proposed IRC Section 2704 regulations still withdrawn and on ice, clients continued to use discounts in determining the appropriate fair market value for gifts. Two recent cases (*Kress v. United States*⁶ and *Jones v. Commissioner*⁷) also blessed tax-affected valuations to better reflect the economic realities when valuing assets that may be gifted or sold to family members, intra-family trusts or other entities. Not surprisingly, Sen. Sanders' bill proposes to close what he describes as the "valuation discount" loophole.

Wealth Tax Concerns

The political discourse on finding ways to tax the affluent and discussions about wealth redistribution have been unsettling for many UHNW clients. Several candidates have advocated for a "wealth tax," and some high profile members of the elite Americans in the top .01% voiced support for this notion in an open letter in June 2019.⁸ Advisors face questions from clients who seek to understand what a wealth tax might look like in the United States and to better understand why such approaches have been so unsuccessful in other countries.⁹

Cleaning Up Co-Investment Vehicles

In the wake of *Powell v. Comm'r*¹⁰ and *Cahill v. Comm'r*,¹¹ 2019 was also a year of focusing on existing family co-investment vehicles to address IRC Section 2036(a) concerns. Senior family members have been advised to take a fresh look at all family limited partnerships and family limited liability companies to determine whether any family member who previously transferred interests could be accused of

retaining rights "in conjunction with others" to control beneficial enjoyment.¹²

Philanthropy Trends

While the more affluent may not be worrying about bunching their charitable donations, it became clear in 2019 that many were continuing to use donor-advised funds (DAFs) either in place of family foundations or in concert with them. The National Philanthropic Trust's 2019 DAF report stated that for the ninth consecutive year, there was a growth in all key DAF metrics (number of individual DAFs, grant dollars from DAFs, contributions to DAFs and charitable assets held in them).¹³

The year 2019 was also one in which estate-planning advisors encouraged their wealthiest clients to explore ways to shift some of their family member individual giving that may not be fully deductible into charitable donations made instead by non-grantor trusts.¹⁴

Focus on Family Flourishing

Many of us who work with UHNW families have found The Purposeful Planning Institute (founded in January 2010)¹⁵ to be a collaborative and interdisciplinary network of professionals with a shared focus on how to promote family thriving. In 2019, some might say this work went mainstream with an inaugural half-day program at the American College of Trust and Estate Counsel's fall meeting titled "Estate Planning in the 21st Century: Using Positive Strategies to Foster Client Happiness and Well-Being," encouraging professionals in our industry to apply findings from positive psychology research in our work with clients.¹⁶

Looking ahead, we anticipate the trends described above to continue and expect to see another busy year in the family office and UHNW planning space. 🌐

Endnotes

1. Mark DeCambre, "The richest 10% of households now represent 70% of all U.S. wealth," MarketWatch (May 31, 2019), www.marketwatch.com/story/the-richest-10-of-households-now-represent-70-of-all-us-wealth-2019-05-24.
2. Luisa Kroll and Kerry A. Dolan, "Billionaires The Richest People in the World,"

NIGHT & DAY: HIGH-NET-WORTH FAMILIES & FAMILY OFFICES

- Forbes* (March 5, 2019), www.forbes.com/billionaires/#46803d08251c.
3. Ben Steverman, “High-Tax States Make It Hard for the Rich to Leave,” *Bloomberg* (March 4, 2019), www.bloomberg.com/news/features/2019-03-04/rich-people-find-it-hard-to-flee-states-targeted-by-salt-limits.
 4. Dion Rabouin, “The missing housing boom,” *Axios* (Oct. 21, 2019), www.axios.com/real-estate-housing-market-stagnant-6a1dfda5-e508-4281-8af1-1145c9901640.html.
 5. “For the 99.8% Act,” Summary, www.sanders.senate.gov/download/estate-tax-one-pager.
 6. *Kress v. United States*, 123 A.F.T.R.2d 2019-1224 (E.D. Wis. March 26, 2019).
 7. *Jones v. Commissioner*, T.C. Memo. 2019-101 (Aug. 19, 2019).
 8. “An Open Letter to the 2020 Presidential Candidates: It’s Time to Tax Us More,” Medium (June 24, 2019), <https://medium.com/@letterforawealth-tax/an-open-letter-to-the-2020-presidential-candidates-its-time-to-tax-us-more-6eb3a548b2fe>; See also Ari Shapiro, “Disney Heiress Calls for Wealth Tax: ‘We Have To Draw A Line,’” *NPR* (June 28, 2019), www.npr.org/2019/06/28/736993245/disney-heiress-calls-for-wealth-tax-we-have-to-draw-a-line.
 9. The Editorial Board, “Where Wealth Taxes Failed,” *Wall Street Journal* (Nov. 4, 2019), www.wsj.com/articles/where-wealth-taxes-failed-11572910833.
 10. *Powell v. Comm’r*, 48 T.C. No. 18 (May 18, 2017).
 11. *Cahill v. Comm’r*, T.C. Memo. 2018-24.
 12. See N. Todd Angkatavanich and Eric Fischer, “Family Co-Investments in the Wake of *Powell* and *Cahill*: Time to Kick the Tires on Old Vehicles,” *BNA Tax Management Estates, Gifts and Trusts Journal*, Vol. 44, No. 1 (Jan. 10, 2019).
 13. 13th Annual Donor-Advised Fund Report, National Philanthropic Trust (Nov. 12, 2019), www.nptrust.org/reports/daf-report/.
 14. See, e.g., Scott Testa, “Setting up Non-grantor Trusts for Income Tax Savings Under TCJA,” www.friedmanllp.com/insights/setting-up-non-grantor-trusts-for-income-tax-savings-under-tcja (Jan. 22, 2019); John Ure, “Should I Change My Grantor Trust to a Nongrantor Trust?” <https://aronsonllc.com/should-i-change-my-grantor-trust-to-a-nongrantor-trust/> (Sept. 24, 2019).
 15. <http://purposefulplanninginstitute.com/>.
 16. See, e.g., Jonathan Haidt, *The Happiness Hypothesis: Finding Truth in Ancient Wisdom* (2006); Martin Seligman, *Flourish: A Visionary New Understanding of Happiness and Well-being* (2011).

TRUSTS & ESTATES



NEW! **TRUSTS & ESTATES** is now available in a digital format on tablets and smartphones.

ESTATE PLANNING
100th Anniversary
100 Years of Eminent Domain
100 Years of the Federal Reserve
100 Years of the National Labor Relations Act
100 Years of the Social Security Act
100 Years of the National Health Insurance Act
100 Years of the National Labor Relations Act
100 Years of the Social Security Act
100 Years of the National Health Insurance Act

Subscribe to Trusts & Estates



Digital

Visit TrustsAndEstates.com/Subscribe

Print