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If you have any questions about this Advisory, please contact:

**MICHAEL CLEAR**  
203-363-7675  
mclear@wiggin.com

**LEONARD LEADER**  
203-363-7602  
lleader@wiggin.com

**VERONICA BAUER**  
561-701-8701  
vbauer@wiggin.com

**ROBERT BENJAMIN**  
212-551-2602  
rbenjamin@wiggin.com

**KAREN CLUTE**  
203-498-4349  
kclute@wiggin.com

**DANIEL L. DANIELS**  
203-363-7665  
ddaniels@wiggin.com

**HELEN HEINTZ**  
203-363-7607  
hheintz@wiggin.com

**DAVID KESNER**  
203-498-4406  
dkesner@wiggin.com

## PRIVATE CLIENT SERVICES 2019 YEAR-END ADVISORY

As 2019 draws to a close, we present our annual year-end advisory. Our 2019 edition outlines the current estate and gift tax environment, reviews the extensive changes to Connecticut trust law, and highlights year-end planning opportunities. Finally, we are delighted to announce the addition of a new Private Client Services partner in our Greenwich office, Carolyn A. Reers.

### 2020 ESTATE, GIFT AND GST TAX EXEMPTION

For 2020, the estate, gift and generation-skipping transfer ("GST") tax exemption amounts are projected to be as follows:

**Unified Federal Estate, Gift and GST Tax Exemption.** The estate, gift and GST tax exemption will be \$11,580,000 per taxpayer, up from \$11,400,000 in 2019. With proper planning, a married couple can shield a total of \$23,160,000 in 2020. Note that on January 1, 2026, the exemption is set to revert to \$5,000,000, indexed for inflation after 2011.

**Estate, Gift and GST Tax Rate.** The federal estate, gift and GST tax rate will remain at 40%.

**Annual Exclusion from Gift Tax.** The gift tax annual exclusion will remain at \$15,000 per calendar year and per donee in 2020. Accordingly, a married couple may make

gifts of up to \$30,000 per calendar year and per donee with no estate or gift tax consequences. The exclusion for gifts made to a spouse who is not a citizen of the United States is \$157,000 in 2020.

**Connecticut Unified Estate and Gift Tax Exemption.** The Connecticut estate tax exemption will be \$5,100,000 in 2020, \$7,100,000 in 2021, \$9,100,000 in 2022, and it will match the federal exemption amount on January 1, 2023. The tax rate on estates or gifts in excess of the Connecticut exemption ranges from 7.8% to 12%.

**New York Estate Tax Exemption and "Look Back."** For decedents dying on or after January 1, 2020, the estate tax exemption will be \$5,850,000. The New York estate tax is a "cliff tax" and as such, if your taxable estate at the time of your death is greater than 105% of the value of the exemption, then the exemption is completely phased out and all assets are taxed. In effect, this estate tax "cliff" will subject your entire estate to New York estate tax. The top New York estate tax rate is 16%. While New York does not have a gift tax, the state does "look back" and include gifts made by the donor within three years of death in the decedent's estate in calculating the New York estate tax due.

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**CHARLES KINGSLEY**  
 203-498-4307  
 ckingsley@wigggin.com

**CAROLYN REERS**  
 203-363-7668  
 creers@wigggin.com

**ARSINEH KAZAZIAN**  
 212-551-2632  
 akazazian@wigggin.com

**MATTHEW SMITH**  
 203-363-7639  
 msmith@wigggin.com

**MARY MARGARET COLLEARY**  
 212-551-2637  
 mcolleary@wigggin.com

**MI-HAE KIM**  
 212-551-2619  
 mkim@wigggin.com

**ERIN NICHOLLS**  
 203-498-4319  
 enicholls@wigggin.com

**KAITLYN PACELLI**  
 203-363-7635  
 kpacelli@wigggin.com

**BETH SCHARPF**  
 212-551-2634  
 bscharpf@wigggin.com

### SWEEPING CHANGES TO CONNECTICUT TRUST LAW ARE EFFECTIVE JANUARY 1, 2020

As described in our July 2019 Advisory, Connecticut adopted historic new trust legislation embodied in four parts:

1) Connecticut Uniform Trust Code; 2) Connecticut Uniform Directed Trust Act; 3) Connecticut Qualified Dispositions in Trust Act; and 4) Connecticut Uniform Rule Against Perpetuities Act. The legislation brings sweeping changes to Connecticut's trust law by modernizing trust management and administration, outlining fiduciary duties and providing for the formation of Dynasty Trusts, Directed Trusts and Asset Protection Trusts in Connecticut. Some key changes include the following:

**Dynasty Trust Planning.** A trust that continues for multiple generations is sometimes called a "Dynasty Trust." In previous years, Connecticut law provided that non-charitable trusts could not exist in perpetuity and had to terminate within approximately 90 years of creation. The possibility of a Dynasty Trust that extends beyond the lives of the grantor's grandchildren was unachievable unless the trusts were situated in a state that had extended this "rule against perpetuities." The new law makes it possible to create a trust in Connecticut that can last up to 800 years.

**Directed Trusts.** Prior to this new legislation, trustees retained full responsibility over how trust assets were managed, invested and distributed. The new legislation allows a trustee's duties to be allocated among the trustee and other individuals who may be better suited to carry out certain trust objectives. By

establishing a Directed Trust, a grantor can now appoint a trust director, that is, a non-trustee individual with authority to manage a specific part of the trust administration, such as investment decisions, distribution decisions, or decisions relating to the operation of a closely held business in the trust.

**Asset Protection Trusts.** The new law enables the creation of "Self-Settled Asset Protection Trusts." A Self-Settled Asset Protection Trust is a trust created by an individual for the benefit of himself or herself, which in certain limited circumstances may shield assets from the claims of creditors.

**Income Tax Reimbursement.** Under prior Connecticut law, if a trust permitted the reimbursement of income taxes to the grantor of the trust, the principal would be subject to creditor claims. Also, under federal tax law, if a trust is subject to the grantor's creditors, it is included in the grantor's estate for estate tax purposes. The new law makes it clear that such reimbursement authority does not subject the trust assets to claims of creditors.

**Notice to Beneficiaries.** The law imposes new reporting requirements on the trustee to keep each qualified beneficiary (or the beneficiary's designated representative who is qualified to receive notice on behalf of the beneficiary) reasonably informed about the trust's administration, and to provide an annual report about the trust property upon request. These new notice provisions are required for all irrevocable trusts created on or after January 1, 2020 and revocable trusts that become irrevocable on or after January 1, 2020.

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**YEAR-END PLANNING OPPORTUNITIES**
**1. Gifts to Family and Friends that Utilize the Annual Gift Tax Exclusion**

The holiday season often inspires giving to family and friends. Under the federal gift tax laws, you can give up to a certain amount annually (\$15,000 in 2019 and 2020) to any number of people without exhausting any portion of your lifetime exemption from estate and gift tax.

A married couple can double their annual exclusion gifts by giving up to \$30,000 to each of their children or other individuals during the calendar year without incurring any gift tax or using any lifetime exemption. Such gifts may be made either outright or to certain types of trusts under which the beneficiaries have withdrawal rights (sometimes referred to as "Crummey Trusts"), and can be in the form of cash, marketable securities or other property interests. *Please be aware that if an annual exclusion gift is made by check prior to year-end, the recipient must cash or deposit the check during 2019 in order for such gift to count as a 2019 annual exclusion gift.*

Donors may also want to keep in mind two specific exceptions to the gift tax:

- First, tuition may be paid on behalf of an individual directly to an educational institution without incurring any gift tax liability. Reimbursement of tuition expenses to the benefitted individual will be treated as a gift for gift tax purposes, but direct payments to the educational institution will not. While this exception only applies to tuition, funds held in a 529 account (explained below) can be used to pay other

education expenses, such as room and board, books and related items.

- Second, medical expenses may be paid on behalf of an individual directly to the provider also without incurring any gift tax liability. In order to qualify, such medical expenses must not be paid by an insurance company and cannot be reimbursable by insurance. This exception includes payments for prescription drugs; expenses related to the diagnosis, cure, mitigation, treatment or prevention of disease; transportation essential to medical care; and premiums for medical insurance.

As mentioned above, Connecticut residents should be aware that Connecticut imposes its own gift tax. The Connecticut gift tax annual exclusion mirrors the federal gift tax annual exclusion and generally follows the same rules; however, for 2019 gifts beyond the annual exclusion amount (\$15,000 per individual), Connecticut provides for only a \$3,600,000 lifetime gift tax exemption (\$7,200,000 for a married couple if gifts are split), reduced by the amount of any prior gifts made since 2005 in excess of the annual gift tax exclusion amount.

**2. Contributions to 529 Plans**

The end of the year is also a time to consider establishing 529 accounts, or funding existing accounts, for the benefit of your children or grandchildren. Federal law allows annual exclusion contributions to Section 529 education savings plans ("529 accounts"), a tax-advantaged savings plan designed to encourage saving for future education costs.

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*This publication is a summary of legal principles. Nothing in this article constitutes legal advice, which can only be obtained as a result of a personal consultation with an attorney. The information published here is believed accurate at the time of publication, but is subject to change and does not purport to be a complete statement of all relevant issues.*

529 accounts can be set up as separate accounts for each family member. The contributed funds can grow tax-free and be withdrawn tax-free as long as the funds are used to pay for the beneficiary's education. Please note that up to \$10,000 per year and per student may be withdrawn from a 529 plan to pay for elementary and secondary school expenses.

There is also a five-year rule that allows an individual to fund a 529 plan with five times the annual exclusion amount. In other words, \$75,000 per person or \$150,000 per married couple can be contributed in 2019; the five-year contribution must be reported on a timely filed gift tax return. While additional contributions within that five-year period are not permitted, you are allowing a larger sum of money more time to grow tax-free. Alternatively, you may make an annual exclusion gift in 2019 (either \$15,000 per single person or \$30,000 per married couple) to the 529 plan and then make a five-year contribution in 2020 to make an even larger contribution that will continue to grow tax-free.

### 3. Charitable Giving

While gifts to qualified charitable organizations can be made with cash gifts, giving appreciated assets (assets that will incur capital gains tax upon sale) directly to a charity is a simple and tax efficient method of achieving philanthropic goals. In most cases, you can claim an income tax deduction based on the fair market value of the property contributed, and a qualified charitable organization will not incur capital gains tax when it sells the property. For taxpayers in higher tax brackets, gifting appreciated assets to charity in 2019 and beyond can be

an effective way to avoid capital gains tax and the 3.8% Medicare surtax. To further your charitable goals you may also structure charitable gifting through entities such as donor advised funds, private foundations or through trusts (such as charitable remainder unitrusts).

Charitable contributions may also be made from individual retirement accounts (IRAs). Traditionally, IRA distributions are taxed to the recipient at ordinary income tax rates. However, current law also allows individuals over the age of 70½ to direct up to \$100,000 to be distributed from an IRA directly to a qualified charity, thus avoiding the income taxes on such amount.

### WIGGIN AND DANA WELCOMES A NEW PARTNER

Wiggin and Dana is pleased to report that Carolyn A. Reers, an experienced and highly regarded trusts and estates lawyer, joined the firm as a Private Client Services partner. For over two decades, Carolyn has represented affluent individuals and their closely held companies and family offices with a focus on international estate and tax planning.

### FINAL THOUGHTS

As 2019 ends, we recommend that you consider the planning opportunities described above, including making annual exclusion gifts prior to year-end if you have not already done so. We welcome the opportunity to discuss the planning options that will be available once the Connecticut Uniform Trust Code provisions become effective in 2020. In the meantime, we wish you and your family the very best for the holidays and a wonderful 2020.