Senator Sanders' Plan for the Taxation of the Wealthy

George Will recently wrote: "Higher tax rates and/or new taxes (e.g., on carbon) are coming."[1] Here are just a few reasons to believe he is correct:

- Senator Bernie Sanders has decisively won the Nevada Caucuses and holds the lead in the delegate count for the Democratic nomination.
- The national debt is $23.4 trillion and the projected 2020 national deficit is $1 trillion.
- Wealth and income inequality are at extraordinary levels and eroding trust in democratic societies according to the United Nations.[2]
- U.S. life expectancy has not kept pace with other wealthy nations and has decreased since 2014. Income inequality has also widened.[3] U.S. women in the top 1% of income live 10 years longer on average than women in the bottom 1%, and U.S. men in the top 1% of income live 15 years longer than men in the bottom 1%.[4]
- Morgan Stanley estimates that $50 trillion worldwide will be needed to meet the targets of the Paris climate agreement.[5]
- The American Society of Civil Engineers estimates that $4.6 trillion is needed to fix U.S. infrastructure.[6]

Increased taxes on the wealthy will be a significant source of new revenue. Senator Sanders is the leading Democratic candidate at present, so his proposals to increase taxes on wealthy Americans should be closely reviewed. They include:

1. Annual Wealth Tax.[7] The idea of Senator Sanders' wealth tax is to cut the wealth of billionaires in half within 15 years.[8] The Tax Rate Chart provides the rate schedule for married couples. This is halved for single individuals.

Tax Rate Chart for Senator Sanders' Annual Wealth Tax

A	B	C	D
Taxable amount	**Taxable amount not over**	**Tax on amount in Column A**	**Rate of tax on excess over amount in Column A**
$ -	$ 32,000,000	$ -	None
$ 32,000,000	$ 50,000,000	$ -	1%
$ 50,000,000	$ 250,000,000	$ 180,000	2%
$ 250,000,000	$ 500,000,000	$ 4,180,000	3%
$ 500,000,000	$ 1,000,000,000	$ 11,680,000	4%
$ 1,000,000,000	$ 2,500,000,000	$ 31,680,000	5%
$ 2,500,000,000	$ 5,000,000,000	$ 106,680,000	6%
$ 5,000,000,000	$ 10,000,000,000	$ 256,680,000	7%
$ 10,000,000,000	and above	$ 606,680,000	8%

The Senator's website also states that "[a]ssets placed in a trust would be treated as owned by the grantor of the trust (by the person giving assets to the trust) until that person's death." Presumably this means the wealth tax would apply to irrevocable trusts that estate planning attorneys, like us, have helped clients

[1] Will, A plan to treat wealth like wages, Washington Post (February 20, 2020).
[2] Ingraham, U.N. warns that runaway inequality is destabilizing the world's democracies, Washington Post, February 11, 2020.
[3] Woolf & Schoomaker, Life Expectancy and Mortality Rates in the United States, 1959-2017, Vol. 322, No. 20 JAMA (November 26, 2019)(Since the 1990, "[i]ncome inequality widened, surpassing levels in other countries, concurrent with the deepening US health disadvantage.).
[4] Chetty, Stepner, Abraham, Lin, Scuderi, Turner, Bergeron & Cutler, ***The Association Between Income and Life Expectancy in the United States****, 2001-2014*, Vol. 315, No. 16, JAMA (April 10, 2016, corrected January 3, 2017).
[5] Morgan Stanley Research, Decarbonization. The Race to Zero Emissions (November 25, 2019).
[6] Frank, Civil engineers say fixing infrastructure will take $4.6 trillion, CNN Money (March 9, 2017).
[7] This assumes that a wealth tax is constitutional. There is a debate about that. Senator Sanders' website provides links to several law review articles addressing the constitutionality of such a law.
[8] Senator Sanders' campaign website at https://berniesanders.com/issues/tax-extreme-wealth/.

create to shift assets outside of their taxable estate for federal estate tax purposes – i.e., at least until the grantor dies. Stay tuned!

2. Federal Gift, Estate & GST Taxes Become Robust. Senator Sanders introduced the "For the 99.8 Percent Act" in the Senate on January 31, 2019 and his campaign website refers to this Act as being his plan as President.[9] Among other changes:

- The gift and estate tax exclusions are reduced from their current $11.58 million level to $1 million and $3.5 million, respectively.
- While the exclusions fall, the gift and estate tax rate increases: 45% (up from 40%) from $3.5 million to $10 million, 50% from $10 million to $50 million, 55% from $50 million to $1 billion, and 77% for amounts over $1 billion.
- GST trusts (i.e., Dynasty Trusts) are limited to 50 years.
- The annual gift tax exclusion is reduced to $10,000.
- Valuation discounts for interfamily transfers of assets are limited.
- GRATs are required to have a minimum 10-year term and minimum remainder value.
- Estate taxes are imposed at the grantor's death on the value of any irrevocable "grantor" trust (and lifetime distributions from such trusts are subject to gift tax). These proposed rules for "grantor" trusts apply to such trusts created or funded after the date of enactment.
- One additional thought about the GST tax. Throughout its history, the basis for the rate of the GST tax has been the "maximum Federal estate tax rate"[10] Senator Sanders' proposal makes no reference to any changes to the methodology used in calculating the GST tax, so does this mean that any transfer subject to the GST tax would be taxed based on the maximum Federal estate tax rate of 77%? The answer is unclear.

3. Income Taxes Increase. Income taxes increase dramatically for earners over $10 million, and favorable capital gains and dividends rates are eliminated for the top 1%.[11]

We believe that accumulated family wealth can be used to support family well-being.[12] Therefore, we believe it is necessary to protect accumulated wealth from risks associated with taxation, investment, creditors and other threats. In our prior Client Alert entitled *The Estate Tax – Being Revived?*, we suggested that wealthy families should be focused on using the current $11.58 million exclusion amount by lifetime gifts before it can be reduced. That suggestion still applies, but also the window may be closing to implement GRATs, make sales to "grantor" trusts, make taxable gifts at a 40% rate, and on and on.

Of course, none of these tax changes may actually happen. The status quo may persist.

If you have any questions, please call one of our lawyers.

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[9] S.309, 115th Congress (https://www.congress.gov/bill/116th-congress/senate-bill/309/text).

[10] I.R.C. §2641(a)(1).

[11] Senator Sanders' campaign website at https://berniesanders.com/issues/tax-increases-for-the-rich/

[12] Richard Franklin presented a paper entitled "Well-Being Supported by Family Wealth — A Foundation to Flourish" at the 2019 ACTEC Fall National Meeting in Philadelphia, Pennsylvania. Richard explains how families can intentionally use accumulated wealth to support well-being and flourishing. Please contact Angela at avisas@FKL-law.com if you would like a copy of the paper.