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**February 15, 2021 Annual Client Letter[1]**

After we thought 2021 would never get here, we are already almost two months into it. This brings us to our recurring annual client letter, which has been a tradition to share with you. We include three focus points, specifically: (1) a reminder of numerous tax and filing requirements that integrated estate planning structures (an "IEP") may encounter; (2) selected good ideas and refreshers that may be of interest; and (3) some developments in the areas of our practice that could be of relevance to you.

We hope you find this letter helpful, and more importantly, it is our goal that you will identify some items to work with us or your other advisers on to better position your planning structures to reach your intended goals. We hope to soon be able to once again work with you in the old-normal ways as we slowly phase out of the restrictions we have been experiencing due to the COVID pandemic.

Last summer our Denver office moved to a new building and you can find our new address at the top of this letter. We trust you will update your records accordingly. If our firm serves as Registered Agent for any Colorado business entity that is involved with an IEP, please note that our address should be updated with the Colorado Secretary of State. If you wish for us to update that information on your behalf, please let us know.

Also, before breaking into the separate sections, please be reminded that as the legal landscape changes, so too should your IEP and other estate planning structures. We mentioned our recommended changes in prior correspondence and would be happy to cover these with you by phone, which is more conducive to the interactive nature of this topic.

At the end of 2020, we were extremely busy as many clients wanted to use up their remaining estate and generation-skipping transfer tax exemptions before the Biden administration came into office. We expect that we will be extremely busy at the end of this year as well. We

[1] as edited and redacted for general release

want to ensure that we can get everyone's year-end transactions completed, but we may not have the capacity to get every transaction finalized if we are not notified within a sufficient time before the end of the year. Thus, it would be much appreciated if you can notify us by November 1st if you need any transactions or planning completed by the end of this year. If you notify us by November 1st, we can most likely get your planning completed by year-end even if we are otherwise extremely busy.

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Back to our regular programming, we hope you find the following sections full of useful information:

**I.** **<u>TAX AND FILING REQUIREMENTS</u>** – Section I provides various requirements for you to bear in mind in 2021 as it relates to any reportable 2020 activities.

**II.** **<u>SELECT GOOD IDEAS AND REFRESHERS</u>** – In Section II, we present some ideas and refreshers on other ways to enhance an overall IEP.

**III.** **<u>DEVELOPMENTS</u>** – Lastly, Section III summarizes some of the more material asset protection and integrated estate planning developments from this past year or so.

Please keep in mind, however, that in the above-described sections of this letter, we have only captured the essence of a number of points to be made in an effort to capture the breadth of information in an efficacious manner. As a result, it should be prefaced that the information contained in this letter is not intended to cover the various details of each item, and does not otherwise constitute legal advice, especially since every client's situation is unique.

A letter of this nature cannot be all-encompassing due to space and other limitations, and that there is no substitute for personal professional advice.

## I. TAX AND FILING REQUIREMENTS

The tax and filing requirements that are of particular relevance to U.S. citizens and U.S. residents who have settled an integrated estate planning trust (hereinafter referred to as an "IEPT," or alternatively as an "IEP" with regard to an overall "integrated estate plan") appear on the Attachment to this letter.

## II. SELECT GOOD IDEAS AND REFRESHERS

### A. Basis Planning

Traditionally, estate planning has focused on reducing estate taxes and, to a lesser extent, reducing generation-skipping transfer taxes. With the likelihood that the estate tax exemption amount will decline in the future (either automatically in 2026 or earlier if done so through legislation), many high net-worth families have either already gifted sufficient assets to utilize this increased exemption amount or plan to in the near future. Many of these transfers were to completed gift trusts, which are not eligible for any basis step-up upon the death of the trust's grantor. This means that the trust will likely owe significant capital gains tax in the future when the assets are eventually sold.

To be clear, the capital gains tax is lower than the estate tax and does not have the same liquidity issues as the estate tax, so utilizing the full estate tax exemption amount before it declines is the right planning move regardless of capital gains tax implications. However, with foresight and proper planning, there are several strategies that can be employed to significantly reduce, or even eliminate, the impact of losing the step-up in basis. A few of these options are briefly described below.

1. **Use of Swap Power.** Many trusts contain a swap power, where the grantor can swap out assets from the trust in exchange for assets of equivalent value. This is typically included to cause the trust to be a so-called "grantor trust," meaning that the trust's income tax is paid by the trust grantor, not by the trust itself. However, this power can also be used to swap out low basis assets from the trust (i.e., assets with significant built in gain) for high basis assets (assets with low built in gain, or even with a built in loss). The low basis assets will return to the grantor and will receive a step-up in basis on the grantor's death. The high basis assets will not receive any basis step-up, but the impact will be minimized since these assets had little built-in gain, thereby reducing the trust's exposure to capital gains taxes.

2. **Undoing Valuation Discounts.** Many assets are held through limited liability companies, partnerships, and other structures that allow for the use of valuation discounts. While these discounts can have huge benefits for gifting purposes, if any of these assets end up in a person's taxable estate, those same discounts limit the amount of basis step-up that can occur (sometimes by as much as 30-40%). Thus, for basis step-up purposes, it may actually be beneficial to alter your IEP to eliminate, or at least minimize, these valuation discounts, by either liquidating these companies or amending the relevant documentation. This will increase your taxable estate, so this is likely a better option for clients that are not otherwise concerned about estate taxes.

3. **Upstream Planning.** You may have ancestors, such as parents, that have excess estate tax exemption remaining. This excess exemption amount can be used to move assets to an ancestor for estate tax purposes, thus using that excess exemption, and providing a step-up in basis for the asset when that ancestor passes away. Oftentimes this upstream planning is done by granting (or allowing a trustee to grant) a general power of appointment to an ancestor, typically a parent, which causes the asset to be included in the estate of the ancestor without transferring any outright ownership to such ancestor. This approach allows you to provide certain limitations to the power of appointment, make the appointment contingent on some event occurring (such as the trustee granting such power), or even limit the assets to which that power applies.

Please note that there has been some talk about the step-up in basis laws being eliminated. While it is too early to tell if this is likely, your basis plan should take into account this possibility. In any event, if you are interested in engaging in basis planning, you should contact us to discuss your available options.

### B. <u>Transfers of California Real Property</u>

California law provides, in relevant part (subject to a number of exceptions), that transfers involving California real estate result in an adjustment to the value of the real estate for property tax purposes. To qualify for one of the exceptions when making such a transfer, the IEPT must contain certain language. As such, we strongly urge that California counsel be consulted so that any needed language is analyzed with regard to other goals of an IEP.

### C. <u>Any Change in Settlor, Trustee or Protector</u>

When a domestic trustee or third-party domestic protector of a domestic "offshore" IEPT dies or resigns, the IEPT may remain a domestic trust for United States federal income tax purposes *only if* a new trustee or protector, who is a United States person, is appointed within 12 months of the trustee's or protector's death or resignation. If a new trustee or protector is not appointed within the 12-month period, then generally the IEPT will retroactively be classified as a "foreign" trust for United States federal income tax purposes, resulting in additional tax filing requirements (as described in the Attachment mentioned in Section I. above) and exposure to fines and penalties for non-compliance. There is also a potential income tax issue should an IEPT's settlor die while the IEPT is classified as a foreign trust for United States federal income tax purposes. *Accordingly, please notify us as soon as possible upon the death or resignation of either a trustee and/or protector, so that we may assist you with any needed timely and proper appointment of a successor.*

This 12-month period is permitted only in the event of an "inadvertent" change, which includes death or resignation. Conversely, in the event a domestic trustee or a domestic protector is **removed** (which would not be classified as an "inadvertent" change), then such 12-month grace period will not apply. In that case, the IEPT will automatically be classified as a foreign trust for United States federal income tax purposes as of the date of the removal. Therefore, if the desire is to keep the IEPT domestic for United States federal income tax purposes, we recommend that a successor domestic trustee or domestic protector be effectively appointed prior to or at the same time that the then-serving domestic trustee or protector, as the case may be, was removed.

On a broader scale, if the residency of a settlor, trustee, or protector will change, please contact us right away so that we can determine if this could cause an otherwise "domestic" offshore trust to become a foreign trust with significant new IRS filing requirements that carry hefty penalties if missed.

If, by chance, the IEPT was designed as a grantor trust that is also a completed gift trust, and is a foreign trust for United States federal income tax purposes, and the settlor passes away, there can be income tax consequences at that time unless the IEPT is amended in advance to maintain its grantor trust status (under IRC Section 678).

### D. <u>Avoid Mixing Hot Assets and Cool Assets by Conducting a Periodic Asset Review</u>

Over the course of time, the makeup of assets held in an IEP will change. Sometimes the change is from, say, cash to a mix of cash and real estate. Sometimes an airplane or yacht is acquired. When these situations come to our attention, clients almost always see the advantages in our advice that the low risk/no risk assets (referred to as the "cool" assets; for example, cash) be segregated from the high risk assets (referred to as the "hot" assets; for example, real estate, airplane, etc.). The reason for this is that despite the value of certain assets, they can also carry risk. For example, even a limited partner interest that could be subjected to a capital call could become a hot asset. Consequently, the main goal is to keep a liability that may emanate from a hot asset isolated and separate from the cool assets.

### E. State Law Nuances

It is always recommended that any assets that are being transferred first be confirmed by "local" counsel as not having to meet any particular state law requirements that may pertain to transfer taxes, franchise taxes, margin taxes, valuation reassessments, and other possible unintended consequences.

Please check with us prior to making any transfers, in case there may be special considerations such as the ones noted above.

### F. Trusts that Hold United Kingdom ("UK") Assets

If an IEP holds UK assets, the UK may be able to assess a "tax" on such assets. Also, if the IEP owns such UK assets that have incurred a "relevant UK tax liability" (i.e., the IEP has incurred UK liability for income tax, capital gains tax, inheritance tax, stamp duty land tax, wealth tax, or stamp duty reserve tax) and other certain conditions are met, the IEPT may have to register and report certain specified information in the UK on the trustee(s), settlor(s), beneficiaries (including persons named on a letter of wishes), and assets of the IEPT. It should be noted that any such information that is reported will be held in a UK government register and will consequently be available to taxation authorities and other law enforcement officials. If you believe such reporting may apply to you, please contact our office and we can explore this further.

### G. Expatriation

We recently received inquiries concerning the process and costs associated with expatriation. In fact, Treasury Department records reflect that the total number of citizens who expatriated during 2020 was slightly over 6,700, which is over two and a half times the number of expatriations during 2019.

Expatriation can be a good option for certain individuals living abroad because it reduces the administrative burden associated with annual U.S. tax filings and potentially to reduce overall taxes. Determining whether expatriation is a good option requires an individualized analysis that is dependent on several factors, including an individual's net worth, current income, the amount of unrealized capital gains, the current country of residence, etc.

Generally, for high net worth individuals, expatriation is quite expensive because there is an exit tax that, essentially, taxes all unrealized capital gains. Typically, capital gains are taxed when an asset is actually sold, but the exit tax deems that all capital assets are sold as of the date of expatriation, regardless of whether the assets are actually sold, and applies the applicable capital gains rate to such deemed sale. This deemed sale can cause significant liquidity issues.

It may be possible, however, to limit, or even eliminate, the exit tax if expatriation planning is employed in the years leading up to an individual's expatriation. In general terms, the expatriation tax applies to individuals that pass certain net worth or net income thresholds. There are certain types of assets, such as assets held in certain nongrantor trusts, that are excluded for the purposes of calculating these thresholds and are also excluded from the exit tax calculation if those thresholds are nevertheless exceeded. These exclusions are employed when structuring an expatriation plan, typically through a series of gifts and other transfers to nongrantor trusts. These transfers generally must occur at least three years (but preferably five years) prior to expatriation to ensure that the transferred assets are excluded from the exit tax. Accordingly, in order to reduce or eliminate the exit tax, extensive advanced planning must be completed in the years leading up to the expatriation date.

If you are interested in potentially expatriating, please contact us and we can walk you through the process and help determine whether it would be a beneficial move for you.

### H. The Importance of a Gun Trust

Guns are a very sensitive issue in the United States that can inflame the passions of people across the political spectrum. Regardless of one's political views with respect to guns, guns require special consideration with regard to estate planning. For example, if an estate holds firearms, an estate's executor or personal representative can inadvertently commit a state or federal crime merely by transferring the guns to the intended beneficiary if such beneficiary is not qualified to own a gun. In fact, if the executor or personal representative is not qualified to own a gun, he or she may commit a crime merely by taking possession of the weapons in their capacity as the executor or personal representative.

At a minimum, special language should be added to your estate planning documents to ensure that anyone and everyone that may possess or otherwise inherit a firearm is qualified to do so and to provide a contingency for what to do if such person is not so qualified. A more robust option is to actually form a separate gun trust, which will exist for the sole purpose of holding firearms. A gun trust will avoid probate entirely and is specifically designed to ensure that all applicable federal and state laws are followed with regard to the possession and transfer of firearms. A gun trust can also exist for multiple generations, thus ensuring that future generations are also protected from inadvertently violating federal or state law with regard to gun possession or gun transfers.

## III. DEVELOPMENTS

### A. Federal Law Developments

The applicable exemption amount is the amount a taxpayer can give away during life or at death and not incur any gift or estate tax. The applicable exemption amount may also include the unused applicable exemption amount of your last deceased spouse (provided that "portability" is elected by filing a Form 706 (*Federal Estate Tax Return*), and the deceased spouse was a U.S. citizen or resident). For this purpose, the 2021 exemption amount is $11,700,000. To the extent the applicable exemption amount is not used up during life by lifetime gifts, what is left will apply to transfers at death. If lifetime gifts or death-time transfers exceed the applicable exemption amount (or the unused portion thereof), any applicable tax is calculated at a 40% tax rate with respect to the excess amount. Notwithstanding the foregoing, if a husband and wife "gift-split," this exemption figure can be doubled to $23,400,000. This tax law is set to sunset in 2025 so that on January 1, 2026, the exemption amounts will return to the pre-2018 exemption levels (i.e., $5,000,000 basic exclusion amount per person, plus additional amounts to account for adjustments for inflation).

**1. Annual Exclusion—Non-U.S. Spouse.** Gifts between U.S. spouses can be made to an unlimited extent, without any gift or estate tax consequences. However, if the recipient is not a U.S. person, then a $159,000 annual exclusion applies during 2021.

**2. Gift Tax Annual Exclusion.** This exclusion is the amount a person can give away to any number of individual recipients each year without any resulting gift tax consequences. In 2020 and 2021, the gift tax annual exclusion continues to be $15,000 (or $30,000 with "gift-splitting" by spouses).

**3. Generation-Skipping Transfer Tax Exemption.** This exemption is the amount that can pass free of the 40% generation-skipping transfer tax over one's lifetime. Without this exemption, transfers to a grandchild or more remote individual (or a trust whose beneficiaries are comprised of only such persons) would be subject to this tax. During 2021, the exemption amount is $11,700,000 per donor/decedent. Unlike the estate tax exclusion amount, however, the generation-skipping transfer tax exemption cannot be used by a surviving spouse, unless special language is added to your estate planning documents. Please contact us if you would like to confirm whether your estate planning documents include such language or whether a modification is otherwise needed to have it included.

**4. Foreign Gift Reporting Threshold.** A gift from a foreign person must be reported if it exceeds a certain value. During 2021, the threshold amount remains at $100,000 for aggregate gifts made during the year from a foreign donor. The Form 3520 with respect to any purported gifts made (in the aggregate) via a transfer from a foreign partnership or foreign corporation, however, has raised its threshold for reporting purposes in 2020 to $16,649, and in 2021 to $16,815.

**5. Foreign Earned-Income Exclusion.** During 2021, the first $108,700 in income earned abroad by an individual is excluded from taxable income for U.S. income tax purposes (increased from $107,600 during 2020).

## B. Potential Tax Law Changes Resulting From a New Congress and Presidential Administration

With a now Democratic-controlled Congress and the inauguration of the new Biden Administration, certain revisions to existing tax laws may be on the horizon. Please note that the below-listed items are only **potential** in nature, and of course, are not actual law until such bills are passed by Congress and signed into law by the President.

1. A potential decrease of the current applicable exemption amounts (e.g., estate and generation-skipping transfer) from its current level of $11.7 million to somewhere in the range of $3.5 million to $5 million and a

potential decrease of the current lifetime gift exemption amount to $1 million.

**2.** An increase in the 40% gift and estate tax rate.

**3.** The possible elimination of the step-up in tax basis upon an individual's death.

**4.** The potential re-implementation on valuation discount restrictions.

**5.** The potential imposition of restrictions on the use of grantor retained annuity trusts (GRATs).

**6.** The removal of the current advantageous tax rates and implementation of a proposed tax at ordinary income tax rates for long-term capital gains for taxpayers with annual income over $1 million.

**7.** A potential increase on ordinary income tax rates from 37% to 39.6% for incomes over $400,000.

## C. <u>Judge Freezes Assets Held by New Zealand Property Developer</u>

In August 2019, New Zealand's High Court at Christchurch (the "Court") ordered a real estate developer's (the "Developer") assets be frozen after determining that it was "seriously arguable" that Developer attempted to shift assets to a Cook Islands company in order to avoid paying his debts.

The underlying transaction in this case surrounded the default on a loan related to the construction of a $20 million hotel. Colombo Projects Limited ("Colombo"), of which Developer was the sole director, and Developer's company, Fontur Trustee Ltd. ("Fontur") was the majority shareholder, defaulted on a loan that Developer personally guaranteed. Thereafter, a freezing order was sought by Primary Services New Zealand Ltd. ("Primary Services"), which sought judgment against Developer for $850,000 plus interest and costs.

While seeking a judgment, Primary Services became aware that another of Developer's companies advertised a commercial building for sale for $1 million. In late 2018, the ownership interest in this other company was transferred from Fontur to Cook Islands based Ora Trustees Ltd. ("Ora"). Fontur also had interests in yet another company transferred to Ora around the same time.

An affidavit from Primary Services stated that "it is seriously arguable that [Developer] is engaged in the process of attempting to dispose of assets and/or put them beyond the reach of the New Zealand Courts in an attempt to avoid liability under [Developer's] guarantee on the loan from [Primary Services] to [Colombo]." The judge stated "[i]f that strategy were to succeed, then [Primary Services] would be irrevocably harmed, and this, therefore, is an appropriate case for a freezing order."

Therefore, the court entered a freezing order on Developer's shareholder interests in Fontur and any sales proceeds that Developer may become entitled to following the sale or transfer of Fontur's shareholder interests to Ora. Thereafter, in April 2020, the High Court further ruled that Developer was liable to reimburse Primary Services in the amount of $850,000 plus interest.

### D. British Virgin Islands Freeze Order

In May 2020, in the case of *Broad Idea International Limited v. Convoy Collateral Limited*,[2] the Eastern Caribbean Court of Appeals ruled that a British Virgin Islands court could not grant a free standing freezing injunction against a British Virgin Islands company where such company was not a party to substantive proceedings either in the British Virgin Islands or elsewhere. The Court of Appeal also ruled that the assets of a British Virgin Islands company are not to be considered the assets of one of its shareholders such that the company's assets may be directly available for execution of a foreign judgment against that shareholder so as to justify their being made subject to a freezing injunction.

Broad Idea International Limited ("Broad Idea") is a British Virgin Islands company with two individual shareholders. Convoy Collateral Limited ("Convoy") is a Hong Kong company. In February 2018, Convoy instituted proceedings against one of Broad Idea's shareholders in Hong Kong for breach of fiduciary and other duties. Convoy applied to the Commercial Court in the British Virgin Islands and sought to freeze this shareholder's assets as well as Broad Idea's assets. This freeze order was granted against the shareholder in the British Virgin Islands.

Convoy applied for a continuation of the freezing order against Broad Idea and the shareholder. The shareholder subsequently applied to set aside the freezing order, which was granted. However, the freezing order against Broad Idea remained intact.

On appeal, Broad Idea argued that as Convoy made no substantive claim against Broad Idea in the British Virgin Islands, the court had no jurisdiction to grant a freezing order. The court disagreed with Broad Idea and left the freezing order in place.

Again on appeal, Broad Idea's main arguments included whether the judge had the authority to grant a freezing order in the British Virgin Islands when Convoy had not (a) raised any substantive cause of action; (b) had not pursued any substantive proceedings against Broad Idea either in the British Virgin Islands or Hong Kong; and (c) whether such power extended to granting a freezing order in support of foreign proceedings to which Broad Idea was not a party.

In agreeing with Broad Idea, and overturning the freezing order, the Court of Appeal noted that Convoy had no cause of action against Broad Idea either in the British Virgin Islands, Hong Kong, or anywhere else in the world, and therefore the lower court judge had no jurisdiction to grant a freezing order against Broad Idea.

### E. Trusts that Hold French Situs Assets

We were recently advised that French tax authorities now impose an obligation on trustees to file an annual declaration of ownership of any French situs assets, with the first declaration

[2] (BVICMAP 2019/0026)

having been due in December 2020. It is our understanding that French authorities may seek to levy financial penalties on trustees who fail to timely file an annual declaration.

Some trustees may conclude that the ongoing burden associated with this disclosure requirement is such that they no longer wish to hold French assets and may instead wish to instruct financial institutions to specifically exclude French situs assets. Trustees should be aware of this option in the event they wish to avoid the possibility of French reporting requirements. The trustees may also wish to consult with their tax advisors if there is any doubt about their obligations under these French reporting requirements.

### F. Corporate Transparency Act

The Corporate Transparency Act became effective on January 1, 2021 (the "Act"), and essentially bans anonymous shell companies in the United States. Historically, it has been extremely easy to set up a corporation or limited liability company in the United States without disclosing any significant information about the beneficial owners of that entity. While many individuals, particularly high profile individuals, have utilized these types of entities to address valid privacy concerns, this lack of transparency also meant that many legal entities have been used in connection with significant criminal activity. As a result, the Act requires that beneficial ownership information be disclosed to FinCEN when a new entity is formed or when a change in ownership occurs.

The Act requires corporations, limited liability companies, and other similar entities to disclose to FinCEN their beneficial owners (including their identities, addresses, dates of birth, copies of government issued identification, etc.). Beneficial owners, under the statute, include individuals that directly or indirectly exercise substantial control over an entity and individuals that directly or indirectly own twenty-five percent or more of an entity. Regulations will detail exactly how control and ownership is determined, particularly for entities that may be held through estate planning structures (such as trusts), but it is likely that this Act will impact many estate planning entities. However, this information will not be publicly available as it is meant to be used for law enforcement purposes, meaning that these entities can still be used to address privacy concerns.

The Act's disclosure requirements will not be in force until after the implementing regulations have been issued, which will be by the end of this year. If you have any concerns about these new requirements, you should contact us so that we can discuss these requirements with you and discuss potential alternative structures that may not need to comply with these requirements, such as potentially using offshore entities.

### G. Potential Nevis Tax Law Changes

Nevis is currently in the process of amending its income tax provisions regarding limited liability companies and other entities. The new law has not been finalized or gone into effect, but given the potential tax impact this change could have on limited liability companies that are operated in Nevis, it is important to consider potential steps now to reduce your risk if an IEP structure contains a Nevis limited liability company.

The proposed law essentially codifies the Nevis common law concerning the taxation of entities that are controlled inside of Nevis, but it also clarifies what types of activities will subject a limited liability company to Nevis tax. Companies that "reside" in Nevis will be subject to Nevis taxation on worldwide income, while companies that do not reside in Nevis will only be subject to Nevis tax on income that originates from Nevis. A company resides in Nevis if the highest level management decisions are made in Nevis regardless of where the company may be organized.

Because Nevis entities are quite popular protection vehicles due to Nevis's favorable laws, and many of these entities have Nevis based managers, the potential impact of this tax is significant. Traditionally, Nevis based entities have avoided the Nevis income tax by moving "effective" management outside of Nevis, often through a nominee agreement or management services agreement. Essentially, pursuant to this type of agreement, the Nevis manager simply acts on the instructions of a non-Nevis resident. As a result, all important business decisions are made outside of Nevis. Based on the language of the new tax law, it is likely that this structure will continue to provide relief from the Nevis income tax.

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If you prefer not to receive any periodic updates, alerts or educational information from us by email, please let us know. If you have any questions about anything contained in this letter, please email or call. In closing, we want to sincerely thank you for allowing us to be of service and for the history that we so much appreciate having shared with you.

This letter is for your general information. The discussion of any asset preservation and/or estate planning strategies, alternatives, and other observations herein is not intended as legal or tax advice and does not consider the asset protection goals, estate planning objectives, financial situations, or needs of individual clients. This letter is based upon information obtained from various sources that the authors believe to be reliable, but the authors make no representation or warranty with respect to the accuracy or completeness of such information. Views expressed herein are current opinions only as of the date written, and are subject to change without notice. Suggested outcomes may not be realized due to a variety of factors, including changes in law or regulations.

Very truly yours,

**GREENSPOON MARDER LLP**

By: Edward D Brown
Edward D. Brown, Co-Chair

By: Carl H. Linder
Carl H. Linder, Co-Chair

**ATTACHMENT TO**
**GREENSPOON MARDER LLP**
**ANNUAL CLIENT LETTER**
**February 15, 2021**

1. **General Federal Tax Reporting:**

| Form Number and Name | Purpose of Form | Miscellaneous Comments | Due Date |
|---|---|---|---|
| **IRS Form 1041, U.S. Income Tax Return for Estates and Trusts** | **Form 1041** must be prepared and filed in a timely manner for each integrated estate planning trust ("IEPT") that you have settled. | This form can usually be a simplified version, completed by inserting zeroes on the first page and leaving the remaining three pages blank. A separate statement with the name and tax identification number of each grantor, and the IEPT's items of income and expense would then be attached. | April 15, 2021, unless extended to September 30, 2021 |
| **IRS Form 1065, U.S. Return of Partnership Income** | **Form 1065** must be prepared and filed in a timely manner for each limited partnership, LLC, and the like, unless the entity is a "disregarded entity" for federal tax purposes. | In many cases, the ownership interests in the partnership or LLC are designed to remain at 1% for the general partner(s)/manager(s) and 99% for the limited partner/ member (the IEPT).<br><br>This is pursuant to the "Affidavit of Intent" you executed when the IEPT and partnership/ LLC documents were signed. | March 15, 2021, unless extended to September 15, 2021 |

| Form Number and Name | Purpose of Form | Miscellaneous Comments | Due Date |
|---|---|---|---|
| **IRS Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return** | **Form 709** needs to be filed to reflect any transfers made by you during 2020 to the planning structure. | This return may be informational only in nature (with no tax due), if the structure was designed to treat any transfers as incomplete for federal gift tax purposes under Treasury Regulations Section 25.2511-2, and as such there would be no gift tax implications. | April 15 following the close of each year a transfer is made to the IEPT or any underlying entities.<br><br>Any extension of time granted for filing your calendar year 2020 individual federal income tax return (IRS Form 1040) will also automatically extend the time to file your 2020 federal gift tax return. |
| **U.S. Department of Agriculture/Farm Service Agency Form FSA 153, Agricultural Foreign Investment Disclosure Act Report** | **Form FSA 153** must be filed if the planning structure you created owns any ranch, farm, or other agricultural property. | Note that ***the definition of "ranch, farm or other agricultural property"*** for this purpose ***is very broad***.<br><br>Please contact us if you would like to discuss this broad definition. ***If a new deed needs to be prepared for any reason,*** there is a good possibility that Form FSA 153 will need to be filed. Also note that ***this is the case whether the IEPT itself is considered a foreign trust or a domestic trust*** for federal tax purposes.<br><br>Finally, a timely filing of Form FSA-153 is tied to the date of the acquisition, the disposition, and/or change in trustee, and not to the end of the calendar year. | **Within 90 days** of either: (i) the acquisition of such property by any component of the overall planning structure; (ii) any disposition or transfer of such property by any component of the overall planning structure; or (iii) any change in trustee name in recorded title. |

| Form Number and Name | Purpose of Form | Miscellaneous Comments | Due Date |
|---|---|---|---|
| **IRS Form 8822-B, Change of Address or Responsible Party** | Use **Form 8822-B** to notify the Internal Revenue Service if you changed who is a responsible party.<br><br>A responsible party includes the settlor of an IEPT or a general partner/manager of a partnership or LLC. | Refer to the Form SS-4 to confirm who was previously identified as the responsible party. | Within 60 days of the date of change of address or the identity of a responsible party. |

2. **<u>Tax Reporting for Foreign Entities</u>:**

| Form Number and Name | Purpose of Form | Miscellaneous Comments | Due Date |
|---|---|---|---|
| **IRS Form 3520, Annual Return to Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts** | Required if the planning structure you established includes an IEPT that is considered a foreign trust for U.S. tax purposes (rather than considered a domestic (U.S.) trust for tax purposes). | The settlor of the IEPT must annually file a **Form 3520**, and the penalty for a late-filed **Form 3520** is the greater of the following: (i) $10,000; or (ii) 35% of the value of the transferred assets. If the **Form 3520** is timely filed, the foregoing penalties still apply to any unreported or underreported contributions and/or distributions. | April 15, 2021 (or October 15, 2021 if your Form 1040 was extended). |

| Form Number and Name | Purpose of Form | Miscellaneous Comments | Due Date |
|---|---|---|---|
| **IRS Form 3520-A, Annual Information Return of Foreign Trust with a U.S. Owner** | Generally, if the IEPT has a foreign-based protector, and/or no protector, and/or only a foreign-based trustee, then this filing requirement will apply. | Penalties will be imposed if this Form is filed with incomplete information or is filed late. The penalties for a late-filed or incomplete **Form 3520-A** is the greater of $10,000 or 5% of the value of the trust assets treated as owned by the U.S. person. Even if you merely make a protective filing (i.e., a filing is not required for the trust but you file anyway), please ensure such filings are made on time to avoid having to contest an automatic penalty issued by the IRS.<br><br>Please contact us for information on the reporting requirements for (a) U.S. beneficiaries and (b) contributors to an IEPT. | March 15, 2021 |

| Form Number and Name | Purpose of Form | Miscellaneous Comments | Due Date |
|---|---|---|---|
| **IRS Form 8865, Return of U.S. Persons With Respect to Certain Foreign Partnerships** | Use **Form 8865** to report the information required under Code Section 6038 (reporting with respect to controlled foreign partnerships), Code Section 6038B (reporting of transfers to foreign partnerships), or Code Section 6046A (reporting of acquisitions, dispositions, and changes in foreign partnership interests). | In addition to any income tax return requirements, certain foreign corporations, foreign partnerships, and foreign LLCs are required to file annual information returns (e.g., if a U.S. person owns 10% or more of a foreign partnership, **Form 8865** must be filed annually).<br><br>With respect to transfers made to a foreign partnership or to a foreign LLC that is in fact classified as a foreign partnership for tax purposes, if the amount transferred exceeds $100,000 of cash or property during the year, the transferor must report the transfer on **Form 8865**, even if an annual **Form 8865** is not otherwise required. | The date your individual income tax return is due (including extensions). |
| **IRS Form 8832, Entity Classification Election** | An eligible entity (e.g., a foreign LLC) uses **Form 8832** to elect how it will be classified for federal tax purposes, as a corporation, a partnership, or an entity disregarded as separate from its owner. | If timely filed, an eligible foreign LLC will avoid being taxed as a corporation. | Generally, an election specifying an eligible entity's classification cannot take effect more than 75 days prior to the date the election is filed, nor can it take effect later than 12 months after the date the election is filed. |

| Form Number and Name | Purpose of Form | Miscellaneous Comments | Due Date |
|---|---|---|---|
| **IRS Form 8858, Information Return of U.S. Persons With Respect to Foreign Disregarded Entities (FDEs) and Foreign Branches (FBs)** | **Form 8858** is for certain U.S. persons that own a foreign disregarded entity directly or in certain cases indirectly or constructively. | **Form 8858** is required to be attached to the owner's annual tax return to disclose that such person owns an interest in the entity. | The date the owner's income tax return is due (including extensions). |
| **IRS Form 926, Return by a U.S. Transferor of Property to a Foreign Corporation** | Use **Form 926** to report certain transfers of tangible or intangible property to a foreign corporation as required by Code Section 6038B. | In regard to certain transfers made to a foreign corporation or to a foreign LLC that is classified as a foreign corporation for tax purposes, if the amount of cash or fair market value of the property exceeds $100,000 or if the transfer results in the transferor directly or indirectly owning at least 10% of the foreign corporation, such transfer must be reported on **Form 926**. | Must be filed with the U.S. transferor's income tax return for the tax year that includes the date of the transfer. |
| **IRS Form 5471, Information Return of U.S. Persons With Respect to Certain Foreign Corporations** | **Form 5471** is used by certain U.S. persons who are officers, directors, or shareholders in certain foreign corporations. | Generally, if a U.S. person owns 10% or more of a foreign corporation, **Form 5471** needs to be filed on an annual basis. A **Form 8992** (U.S. Shareholder Calculation of Global Intangible Low-Taxed Income (GILTI) may also need to be filed. | Attach **Form 5471** (and **Form 8992**) to your individual tax return (or, if applicable, partnership return) and file by the due date (including extensions) for that return. |

### 3. <u>Reporting Foreign Held Assets (Whether or Not in Trust) and Other Miscellaneous Filings</u>:

| Form Number and Name | Purpose of Form | Miscellaneous Comments | Due Date |
|---|---|---|---|
| **FinCEN Form 114, Report of Foreign Bank and Financial Accounts** | Required to be e-filed each year by any United States person who has a financial interest in or signature authority over one or more foreign bank, securities, brokerage or other foreign financial accounts, that in the aggregate exceed the amount of $10,000 at any time during the calendar year. | The definition of a "financial account" also includes an insurance or annuity policy with cash value, a commodity futures or options account, and shares in a mutual fund or similar pooled fund. Remember that the Form's filing requirement applies to a United States person who has more than a 50% present beneficial interest in the assets or income of the IEPT for the calendar year if such IEPT owns a foreign financial account.<br><br>Also, if an IEPT that is treated as a grantor trust for U.S. tax purposes owns the foreign financial account, the United States person who is the settlor is also required to file the Form. | April 15 with respect to accounts existing in the prior calendar year. However, the 1040 filer receives an automatic six-month extension if FinCEN 114 is received by October 15. This form must be filed electronically.<br><br>**It is imperative that the Form be timely e-filed to avoid the substantial civil and criminal penalties, fines and other sanctions that can apply.** |
| **Form 5472, Information Return of a 25% Foreign Owned U.S. Corporation or a Foreign Corporation Engaged In A U.S. Trade or Business** | This Form is required if a foreign trust owns more than 25% of a U.S. single member LLC or certain U.S. corporations. | This applies to a U.S. single member LLC even if such LLC is a disregarded entity. | Possibly April 15 (unless extended) and may require a pro forma **Form 1120**, but the due date may depend on the date the entity tax return (or pro forma tax return) is due. |

| Form Number and Name | Purpose of Form | Miscellaneous Comments | Due Date |
|---|---|---|---|
| **IRS Form 8938, Statement of Specified Foreign Financial Assets** | Use **Form 8938** to report your specified foreign financial assets if the total value of all the specified foreign financial assets in which you have an interest is more than the reporting threshold. | **Form 8938** is required to be filed by certain individuals and certain entities to report owned foreign financial assets if the total value of those assets exceeds an applicable amount (e.g.,$100,000 for married taxpayers filing jointly; $50,000 for a single taxpayer) on the last day of the year, or (for individuals) more than $150,000 at any time during the year for married taxpayers filing jointly ($75,000 for a single taxpayer).<br><br>Specified foreign financial assets generally include assets such as any financial account maintained by a foreign financial institution, and to the extent held for investment and not held in a financial account, any stock or securities issued by someone that is not a U.S. person, any interest in a foreign entity, any financial interest or contract with an issuer or counterparty that is not a U.S. person, and certain commodities held offshore. | Attach **Form 8938** to your individual (or entity, if applicable) income tax return and file by due date including extensions for that return.<br><br>Failure-to-file and accuracy-related penalties apply.<br><br>Filing **Form 8938** does **not** relieve one from the requirements to file **FinCEN Form 114**. |

4. **Reporting a Gift or Inheritance from a Foreign Person:**

| Form Number and Name | Purpose of Form | Miscellaneous Comments | Due Date |
|---|---|---|---|
| **IRS Form 3520, Annual Return to Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts** | A U.S. person must report the receipt of gifts from a foreign individual or the receipt of an inheritance from a foreign estate if the total amount received during the tax year was more than $100,000. | If the U.S. person received more than $16,649 in "purported" gifts, in the aggregate, during 2020 from a foreign partnership and/or a foreign corporation, **Form 3520** must be filed.<br><br>The penalty for not timely filing **Form 3520** is 5% per month (not to exceed 25%) with respect to gifts and inheritances. | April 15, 2021 (including any extensions). |

**PLEASE NOTE**: Depending on local law, certain state or local returns may need to be completed and filed. Either your CPA or our firm can verify any state or local compliance requirements for you. It is ultimately your responsibility as taxpayer to confirm that all required forms are filed in a timely manner. Failure to file or failure to file timely may come with significant penalties. Please consult immediately with your CPA related to all required filings, since the above grid is not necessarily an all-inclusive list. We are available to discuss the requirements as listed above.

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