February 2019 Rates:

- Section 7520 Rate: 3.2%
- Short Term AFR (0-3 years): 2.57%
- Mid Term AFR (3-9 years): 2.63%
- Long Term AFR (over 9 years): 2.91

On January 18, 2019, the Department of the Treasury and the IRS published proposed and final regulations pursuant to Code Section 199A. The regulations note that the threshold amount for computation of Section 199A will now be based upon income of trusts or estates after DNI distributions. In addition, the regulations explain how the anti-abuse rules and Code Section 643(f) prevent avoidance of threshold limitations by establishing non-grantor trusts.

A footnote in the Joint Committee of Taxation's General Explanation of Public Law 115-97 (Tax Cuts and Jobs Act) confirms that increased generation skipping transfer tax exemption may be allocated to prior transfers on a gift tax return.

In Rev. Proc. 2019-3, the IRS provided a list of certain domestic tax issues that the IRS's Associate Chief Counsel will not issue letter rulings or determination letters. The new list includes questions under Code Section 643(f) on whether two or more trusts shall be treated as one trust for purposes of the trusts' income taxation.

In Notice 2019-11, the IRS provides relief to individual taxpayers who, due to the enactment of the Tax Cuts and Jobs Act, have been unable to accurately calculate the amount of their required estimated income tax payments for the 2018 tax year. The addition to tax under Code Section 6654 is waived for any individual whose total withholding and estimated tax payments on or before January 15, 2019 equal or exceed 85% of the tax shown on that individual's return for the 2018 taxable year.

In Private Letter Ruling 201852008, the taxpayers made split gifts to a trust over a 16 year period. Although the taxpayers did not intend to allocate GST exemption to be allocated to the gifts, the tax professionals retained by the taxpayers failed to advise them of the rules under Code Section 2632(c) regarding automatic allocation of GST exemption and the ability to elect out of the automatic allocation by making an election. The IRS concluded that the taxpayers acted reasonably and in good faith and, as a result, granted an extension to make an election out of the automatic allocation.

In *Pine Mountain Preserve, LLLP v. Commissioner, 151 T.C. No. 14*, a partnership donated three easements to a land trust whose conservation purposes were habitat protection and open space preservation. The easements defined a conservation area that was to be restricted in perpetuity from commercial and residential development. However, two of the easements contained a carve-out for a number of "building areas" in which the partnership could construct single family residences and other structures. The easements did not specify the location of the building areas. The Tax Court held that the two easements did not restrict a specific, identifiable piece of property because the supposedly conserved land could be taken back and used for residential purposes. As a result, the Tax Court denied a charitable contribution deduction for the two easements. The Tax Court allowed a deduction for the third easement because, unlike the other two easements, the third easement designated no building areas and permitted no residential construction within the conservation area.

In *Saccullo v. United States, 2019 WL 168217 (11th Cir. Jan. 11, 2019)*, the owner of a property conveyed it to a trust for the benefit of his son in 1998. However, the deed was not witnessed by two individuals, which is required under Florida law. Following the father's death in 2005, the son filed an estate tax return and included the property among the estate's assets. After the IRS assessed an estate tax on the property, the son, in his capacity as trustee, conveyed the property to him and his wife. As the tax remain unpaid, the IRS imposed tax liens. After the IRS administratively seized the property, the son filed a quiet title action in district court, contending that the liens did not cover the property because it was not part of his father's estate. The government responded that the 1998 deed was not properly witnessed and therefore ineffective. The district court granted the government's motion for summary judgment. On appeal, the Eleventh Circuit reversed. Under Florida law, a deed that does not meet the requirements for a conveyance of real estate shall be considered valid five years after its recording. The court concluded that the statute cured the deed, thereby transferring the property out of the father's estate before the government's claim could have vested. Additionally, the statute did not cut off a pre-existing claim. Instead, it prevented the establishment of a claim in the first place.