

New Tax Law Presents Planning Opportunities If You Act Before the End of the Year

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On December 17, 2010, President Obama signed into law the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (the “Act”). In addition to postponing the expiration of the Bush income tax cuts, the Act makes several changes to the estate, gift and generation-skipping transfer (“GST”) taxes.

- The Act provides that the estate and gift tax rate for 2010, 2011 and 2012 will be 35%, with a step-up in basis for property transferred from a decedent. The 35% rate will also apply to generation-skipping transfers made in 2011 and 2012. For 2010, the GST tax rate is zero.
- A lifetime exemption of \$5 million is available to each taxpayer for taxable transfers (by gift or at death) which are subject to any estate, gift or GST tax.
- The Act provides that the estates of decedents who died in 2010 may elect to have no estate tax apply. Heirs of such an estate will inherit property with a carryover basis rather than a stepped-up basis.
- The Act grants taxpayers an additional period in which to file estate and GST tax returns, pay estate taxes, and make disclaimers as to inherited property with respect to estates of decedents dying in 2010 and with respect to transfers made in 2010. The due date for such actions is to be no earlier than September 17, 2011.

Many individuals planned to make gifts during 2010 to take advantage of the 35% rate. Since the 35% rate will now apply for 2011 and 2012, these gifts can be deferred. This could be particularly useful for individuals who were planning to make gifts in excess of the \$1 million lifetime exemption in 2010.

The Act provides significant advantages to generation-skipping transfers — both directly to grandchildren or great-grandchildren, or gifts to trusts for their benefit — made in 2010. The GST tax on these transfers is zero for 2010. Distributions from non-exempt GST trusts can also be made to or in trust for the benefit of grandchildren and more remote descendants at the zero GST tax rate.

Additional provisions of the Act offer other planning opportunities, but the generation-skipping transfer tax savings opportunities described in this Alert are time-sensitive. Individuals should consult with their financial and tax advisors to ensure that they take the new law into account in their own financial planning.

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