

Client Alert

PRIVATE CLIENT SERVICES DEPARTMENT | DECEMBER 2010

WIGGIN AND DANA
Counsellors at Law

New Legislation affecting Estate, Gift and GST Tax Finally Enacted- Special year-end gift opportunities available

On December 17, 2010, President Obama signed the Tax Relief, Unemployment Insurance Authorization, and Job Creation Act of 2010 into law. In addition to extending many of the Bush-era tax cuts for 2011 and 2012, including setting the maximum income tax rate at 35% and the maximum capital gains rate at 15%, this bill temporarily extends the federal estate, gift and generation-skipping transfer ("GST") taxes for two years. Relevant provisions include:

- The federal estate and GST tax exemptions for 2010, 2011 and 2012 are \$5 million (indexed for inflation) with two notable exceptions:
 - Estates of decedents who died in 2010 may elect an unlimited federal estate tax exemption. However, estates making the election to pay no federal estate tax would not be entitled to "step-up" the cost basis of estate assets to fair market value as of date of death. Instead, those estates could add up to \$1,300,000 to the basis of estate assets (plus an additional \$3,000,000 increase to the basis of assets passing to a surviving spouse.)
 - There is no GST tax in 2010 for (i) gifts made directly to grandchildren, (ii) transfers to trusts for the sole benefit of grandchildren and more remote descendants and (iii) distributions from existing trusts to "skip persons" (usually grandchildren.)
- The federal gift tax exemption for 2010 remains \$1 million and jumps to \$5 million for 2011 and 2012.
- The maximum tax rate imposed on estate, gift and GST transfers that exceed the exemptions will be 35% in 2010, 2011 and 2012.
- The estate tax exemption will be "portable" between married couples. This means that at death, a married couple can transfer up to \$10 million, free of estate tax. Note, the gift and GST tax exemptions are not portable.

WHAT DOES THIS MEAN FOR YOU?

For clients who have been waiting to make gifts until we had greater certainty about retroactive reinstatement of the GST tax, the wait is over. We now know that outright gifts to grandchildren, gifts to trusts for the sole benefit of skip persons and distributions from trusts to skip persons made before December 31, 2010, will not trigger GST tax. *This is a tremendous planning opportunity that will not be available in the New Year.* Clients considering gifts in 2010 and Trustees and beneficiaries of trusts that are not exempt from GST tax should consult with their Wiggin and Dana attorney immediately.

The certainty provided by the new estate tax exemption amount means that clients may reconsider their estate plans now. We believe that many clients will want to adopt plans

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that preserve flexibility to maximize the benefits of the new exemption. If you have a larger estate, you may wish to take advantage of additional opportunities created by the increased gift tax exemption to shift wealth to younger generations in a tax advantaged manner. Strategic gifting should be considered by all individuals whose wealth exceeds \$5 million.

Clients living in states that impose an independent state inheritance tax, such as Connecticut, New York, New Jersey and Massachusetts, should ensure that their estate plan has been revised to address possible state estate taxes that may be levied on their estates as a result of the new law.

In conclusion, the new tax law provides historically generous exemptions from the federal estate, gift and GST taxes. Planning to properly consider these exemptions is crucial, including for individuals whose estates do not exceed the \$5 million mark. In addition, the window for taking advantage of the 2010 repeal of the GST tax will close on December 31st. We recommend that you consult with your Wiggin and Dana attorney to discuss what planning opportunities are available to you.

MORE DETAIL TO COME

The next edition of our Client Advisory (Winter 2011) will be devoted to a discussion of the impact of the new tax legislation on our client's wealth transfer strategies. We look forward to providing you with our guidance and analysis as you consider your estate planning needs for the new decade.

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. U.S. Treasury Circular 230 Notice: Any U.S. federal tax advice included in this communication was not intended or written to be used, and cannot be used, for the purposes of avoiding U.S. federal tax penalties.