News From

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What You Need to Know About the 2010 Tax Relief Act

For Clients and Friends of GSRP, LLP

January 1, 2010 will be looked upon forevermore by estate planning professionals as the day they thought would never come-the day the estate tax was repealed for an entire year. As 2010 drew to a close, many watched in further disbelief as the sunset date for the entire EGTRRA tax regime (also commonly known as the "Bush Tax Cuts") quickly approached. However, on December 17, 2010, Congress passed the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, more commonly known as the "2010 Tax Relief Act." For the sake of further brevity, we will refer to it just as the "Act." Although the Act keeps individual income tax rates where they have been since 2001, it contains several estate planning goodies that will prove beneficial to many individuals as they contemplate their estate planning goals. In addition, a popular mechanism for using individual retirement account distributions to benefit charities has been retroactively extended.

Estate, Gift, and Generation-Skipping Transfer Taxes

For the next two years, the estate, gift, and generation-skipping transfer ("GST") tax rates have been reduced and the exemption amounts have increased significantly.

	2009		**2010**		**2011-2012**		**Post-2012**	
Tax	Exemption	Rate	Exemption	Rate	Exemption	Rate	Exemption	Rate
Gift	$1M	45%	$1M	35%	$5M	35%	$1M (?)	55% (?)
Estate	$3.5M	45%	$5M*	35%*	$5M	35%	$1M (?)	55% (?)
Generation-Skipping Transfers	$3.5M	45%	$5M	0%	$5M	35%	$1M (?)	55% (?)

*** Executors for 2010 decedents can also elect into the "no estate tax/modified carryover basis" regime**

Absent further action from Congress, however, the gift, estate, and GST tax rates will increase to 55% and the exemption amounts will fall to $1 million after December 31, 2012. If you are considering making substantial gifts, there may only be a two-year window of opportunity to lock-in low tax rates and take advantage of the higher exemption amounts.[1]

Portability of Estate Tax Exemption for Married Couples

Under the Act, any estate tax exclusion amount that remains unused as of the death of a spouse who dies after December 31, 2010 is available for use by the surviving spouse, in addition to the surviving spouse's exclusion amount. For example, if a deceased spouse only used only $2 million of his $5 million estate tax exemption, whether by lifetime gifts or bequests upon death, his $3 million of remaining exemption can be added to his surviving spouse's own $5 million exemption amount, giving her a total estate tax exemption amount of $8 million. The GST exemption is not portable, however, and careful planning should still be implemented to take advantage of both spouses' GST exemption amounts.

What about 2010 deaths?

The Act imposed an estate tax retroactively for 2010, applying the same exemption amounts and tax rates that will be applicable during 2011. Therefore, the estate of anyone who died in 2010 may have to file an estate tax return if the estate is greater than the $5 million exemption amount. However, the executor of the estate can elect out of paying the estate tax and opt for "modified carryover basis" treatment instead. Executors should consult a tax professional to determine whether opting out of the estate tax is the prudent course of action.

Extensions for 2010 Deaths

For estates of decedents dying after December 31, 2009, and before the date of enactment of the Act, the due date for (1) filing an estate tax return, (2) paying the estate tax, and (3) making a disclaimer of an interest in property passing by reason of the decedent's death, is nine months after date of enactment, or September 17, 2011. However, since this date falls on a Saturday, the actual due date will be September 19, 2011. The same applies for filing a GST tax return, including any election required to be made on the return.

Charitable Gifts Using IRA Funds

Prior to 2010, an individual over age 70-½ was able to direct his IRA trustee to distribute funds from his traditional or Roth IRA directly to charity. Distributions up to $100,000 were excluded from income and were also counted toward the IRA owner's annual required minimum distribution. The Act reinstates this provision for 2010 and 2011. In addition, an IRA owner can elect to treat distributions made in January 2011 as having been made during the 2010 tax year.

Conclusion

Taxpayers were apparently on the "Nice" list this year, as the Act will prove to be good to them. Individual tax rates did not increase, as many feared they would. Gift, GST, and estate tax rates will remain at low rates. Exemption amounts are substantially increased. The Act creates some certainty for taxpayers, at least for the next two years, and opens up doors to planning opportunities that previously had been closed. The professionals at GSRP are available to help you maximize those opportunities for 2011 and beyond.

Here's wishing you a happy and healthy 2011!

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[1] It should be noted that there is a risk that large gifts made within the next two years could later be taxable as part of an individual's estate if the estate tax exemption falls below the current $5 million level. Persons interested in making large gifts should consult with their tax professional for more information and additional assistance.