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2010 Tax Relief Act

From an estate planning perspective 2010 has been a year of uncertainty. We have been waiting for Congress to act, and last Friday Congress did. President Obama signed the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (the "Act") on December 17, 2010. The Act, *which only covers years 2010 through 2012*, contains a wide variety of income and other tax-related provisions. Below is a brief summary of the gift, estate and generation-skipping transfer (GST) tax provisions followed by a few planning considerations, some of which need to be implemented no later than December 31, 2010:

Highlights of the Gift, Estate and GST Tax Provisions

	Estate Tax	Gift Tax	GST Tax
2010 Rates	0% or 35%	35%	0%
2010 Exemptions	Unlimited or $5 million	$1 million	$5 million
2011 – 2012 Rates	35%	35%	35%
2011-2012 Exemptions	$5 million	$5 million	$5 million
Scheduled 2013+ Rates & Exemptions	55% and $1 million	55% and $1 million	55% and $1+ million

Gift Tax

- Leaves unchanged the 35% gift tax rate for gifts made during 2010 in excess of the $1 million gift tax exemption.
- Establishes a $5 million gift tax exemption for gifts made in 2011 or 2012. (This amount is indexed for inflation for gifts made in 2012.)

Estate Tax

- Reinstates the estate tax for individuals who died in 2010. For such individuals an executor may elect to have estate tax repeal apply (and apply the carryover basis adjustment rules).

- For years 2010 through 2012 establishes an estate tax exemption of $5 million (which is indexed for inflation for individuals dying in 2012) and a top estate tax rate of 35%.
- For married couples, allows the surviving spouse to use any unused estate tax exemption of a spouse who dies in 2011 or 2012. This is in addition to the surviving spouse's own estate tax exemption.

GST Tax

- Reinstates the GST tax for transfers made in 2010 and establishes a GST tax exemption of $5 million; however, for generation-skipping transfers in 2010, the GST tax rate is 0%.
- For transfers during 2011 and 2012 establishes a GST tax exemption of $5 million (which is indexed for inflation for transfers in 2012) and sets the maximum GST tax rate at 35%.

Sunset of the Gift, Estate and GST Tax Laws under the Act

The provisions of the Act relating to gift, estate and GST taxes are temporary. Absent further congressional action, these provisions are scheduled to expire at the end of 2012, at which time the pre-2002 gift, estate and GST tax laws will apply.

Planning Considerations

1. Because the GST tax rate for generation-skipping transfers in 2010 is 0%:
   a. Consider making gifts to grandchildren and great-grandchildren no later than December 31, 2010. Special reporting may be required to take advantage of this opportunity.
   b. Consider distributing assets from a grandparent-established trust to grandchildren and great-grandchildren no later than December 31, 2010.
2. Because the estate tax changes include retroactive reinstatement of the estate tax (to January 1, 2010) and an "opt out" election, the executor of the estate of a individual who died in 2010 should consider whether to make such election. This analysis can be complex, and the executor should seek the advice of an estate attorney, CPA or other qualified advisor.
3. For married individuals, your estate plan may have been designed to pass the estate tax exemption to a trust for the benefit of the surviving spouse and other family members, or perhaps even to individuals other than the surviving spouse. Given the $5 million exemption, this may reduce or eliminate the amount that passes directly to, or solely for, the surviving spouse. Therefore, consider the impact of the $5 million exemption to make sure it does not distort the division of property between the surviving spouse and other family members.
4. For married individuals, if your combined estates are likely to be worth less than $10 million, you may wonder whether there is now an opportunity to simplify your existing estate plan. Remember, however, that the estate tax exemption increase is only temporary, and we will generally recommend that you proceed with caution in making changes to existing plans.
5. The increase in the gift tax exemption to $5 million ($10 million for a married couple) is perhaps the most significant change from an estate planning

perspective. The ability to make large tax-free gifts, particularly when combined with other gifting techniques, such as grantor retained annuity trusts and leveraged sales to family trusts, can be expected to have a substantial impact on future estate tax liabilities.

6. The increase in the GST tax exemption to $5 million ($10 million for a married couple) is another significant change with multigenerational impact. When combined with the increase in the gift tax exemption and trust laws that now permit wealth to pass in trust from one generation to the next without limit, the opportunities for "dynasty" trust arrangements are now greater than ever.

Please contact your Thompson Coburn attorney or one of the attorneys in our private client practice group listed below to discuss the impact of the Act on your personal situation. Because some of the planning considerations (involving gifts to grandchildren or distributions to grandchildren from existing irrevocable trusts) must be completed before the end of this year, time is of the essence.

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