



trusts & estates alert

MSK Client Alert

December 21, 2010

Some of you may also receive the information in this Alert as part of a concurrent MSK Tax Alert, which also discusses various income tax changes made by the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (the "Act") signed by the President on December 17, 2010.

This Alert focuses on tax changes relevant to the Trusts and Estates area because we wanted to make sure our Trusts and Estates clients and friends learned about the changes. Only one item (No. 6 below regarding gifts to grandchildren) presents extremely time-sensitive planning opportunities that need to be completed before the end of 2010. If you are interested in making significant gifts to grandchildren at a reduced tax cost (either from your assets or from the estate of someone who died during 2010), please call us as soon as possible to discuss whether this type of planning is right for you.

1. Estate and Generation-Skipping Transfer Tax Reinstated for 2010 Deaths, With Election

For 2010 deaths, an election may be made between either (a) paying estate tax with a \$5 million exemption and 35% maximum rate and receiving a stepped-up income tax basis or (b) paying no estate tax but receiving carryover basis, subject to certain modifications. The estate is deemed to choose option (a) unless affirmatively electing option (b). Method and deadline for electing have yet to be determined.

2. Estate Tax Exclusion Increased for 2011 and 2012 Deaths

The estate tax exemption amount will be \$5 million for deaths in 2011, and \$5 million indexed for inflation in 2012. For deaths in 2013 and later, however, the sunset causes the 2001 estate tax exemption (\$1 million) to come back.

3. Maximum Estate Tax Rate

The estate tax rate is lowered to 35% for deaths in 2011 and 2012, and for 2010 deaths where the estate tax regime is elected.

4. Unused Estate Tax Exemption "Portable" to Surviving Spouse

For 2011 and 2012 deaths, unused estate tax exemption of the first spouse to die

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can be transferred to the surviving spouse and added to his or her own exemption. There are limitations on receiving exemption from more than one predeceased spouse, however.

5. Gift Tax Rate and Exclusion Remain As-Is for 2010 Gifts, but Increase for Later Years

For 2010 gifts, the lifetime gift tax exemption will remain \$1 million and the rate for gifts above \$1 million will remain 35%. For gifts in 2011 and 2012, however, the lifetime gift tax exemption will increase to \$5 million (indexed for inflation in 2012); the rate for gifts above \$5 million will remain 35%. The sunset causes gifts in 2013 and later, however, to be subject to a lifetime gift tax exemption of \$1 million and a maximum rate of 55% for gifts above \$1 million.

6. No GST Tax Payable in 2010

For gifts and deaths in 2010 only, the Generation-Skipping Transfer (GST) Tax rate is 0%, so no GST tax will be payable with respect to such transfers. This could present significant 2010 year-end planning opportunities for a small number of individuals.

7. GST Exemption Increased and Rate Decreased

For gifts and deaths in 2010 through 2012, the GST Exemption is \$5 million (indexed for inflation in 2012). GST Exemption may be allocated for 2010 deaths even if the "no estate tax" option is elected. The GST Tax rate is 35% for 2011 and 2012.

8. Certain Filing Deadlines Extended

For deaths from January 1, 2010, through December 16, 2010, deadlines for filing estate and GST tax returns, paying estate tax, and making disclaimers are extended until the later of September 17, 2011 (9 months from the date of enactment), and the regular due date.

9. Sunset in 2013

Beginning in 2013, everything goes back to the 2001 rules, so the estate tax exemption will be \$1 million, with a 55% rate; the gift tax exemption will be \$1 million with a maximum 55% rate for gifts above \$1 million; and the GST exemption will be \$1 million (adjusted for inflation from 1997).