

December 23, 2009

## Possible One-Year Elimination of Estate and Generation-Skipping Transfer Tax in 2010: Going, Going, Gone?

As we previously reported in our [2009 Year-End Estate Planning Advisory](#), the federal estate and generation-skipping transfer (“GST”) taxes are currently in a state of flux.

Although we had expected that Congress would act by December 31 to avoid the scheduled one-year repeal of the federal estate and GST taxes, it now looks as though Congress will recess without having taken action. In that event, there will be no federal estate tax on the estates of individuals who die in 2010 and there will be no GST tax on transfers made in that year. The federal gift tax will remain in place and the maximum rate will be 35% for gifts made in 2010. Each individual will continue to have a \$1 million lifetime exemption from the federal gift tax. State laws regarding estate, gift and GST taxes will not be affected by any of these changes.

Along with the repeal of the estate and GST taxes, there will be an elimination of the current “step-up” in basis rule as to assets in a decedent’s estate. Under current law, all property owned by a decedent receives a basis increase to its value on the decedent’s date of death. As of January 1, 2010, absent action by Congress, property in a decedent’s estate will retain the decedent’s basis, which will “carry over” to the recipients of the property. Capital gains tax will then be incurred when the property is sold on the difference between the sales price and the decedent’s basis. There are, however, some exceptions to this “carryover” basis regime. Every decedent will be allowed a \$1.3 million step-up in basis to be allocated among their assets. Also, assets which pass to a surviving spouse are allowed an additional \$3 million increase in basis.

On January 1, 2011, the federal estate and GST taxes and the step-up in basis rule are all scheduled to return. The rate for the federal estate and GST taxes will increase to 55%. Each individual will be allowed only \$1 million estate and GST tax exclusions (as compared with the current \$3.5 million exclusions for each tax). The top gift tax rate will increase to 55% with a \$1 million gift tax exclusion.

If Congress does not act on the federal estate and GST taxes before they recess, it is expected that they will act after the new year to reinstate the taxes and that they may attempt to make them retroactive to January 1. Congress’s ability to impose these taxes retroactively is not free from doubt. We will continue to provide information and updates on any new developments.

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## We Can Help

For more information on how these impending changes in the tax law may impact your estate plan, please contact your Katten Muchin Rosenman LLP attorney, or any member of Katten's Trusts and Estates Practice.

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