

Significant Estate and Gift Tax Law Changes Looming!

On December 17, 2010, Congress and President Obama signed temporary legislation that took most people by surprise when they agreed to increase and unify the federal estate, gift, and generation-skipping transfer (“GST”) tax exemptions to a single sum of \$5 million per person for 2011 and 2012. These amounts have been further increased in 2012 by inflation adjustments to an amount of \$5.12 million per person. This means that an individual can transfer property valued at up to \$5.12 million to loved ones this year, either while living or at death, without incurring gift, estate or GST taxes. A married couple can give away twice this amount, or up to \$10.24 million, free of current gift, estate and GST taxes.

This legislation is only in place until December 31, 2012. Unless Congress passes new legislation that either extends the current law, or changes it effective January 1, 2013, the federal gift, estate and GST tax laws will revert to those in place in 2000. As a result, the gift and estate tax exemptions will drop to \$1 million per person, and the GST exemption will drop to \$1 million plus inflation adjustments, for transfers during life and at death. The gift, estate and GST tax rates will also revert to a top rate of 55% from the current flat rate of 35%. Absent a change to this onerous law, many more families will be subject to federal transfer taxes after 2012. Therefore, it is critical that you work with your team of advisors (estate planning attorney, accountant, financial advisor and, if a closely-held business is involved, corporate attorney) to determine which estate, gift and GST tax minimization strategies make the most sense for your personal circumstances.

As you consider taking advantage of this opportunity, you must determine what type of assets you can afford to gift, i.e., income producing or non-income producing, and whether you may need to rely on that asset base in the future. For example, you may be more comfortable making a current gift of a \$2.5M vacation home than a \$2.5M investment portfolio. However, you need to be satisfied that you will not need access to the equity in the home to cover potential future long-term care or other costs.

You should also contemplate whether transferring assets into long-term trusts for your children and their descendants, or making outright gifts to them, fits within your planning objectives. Many parents and grandparents are reluctant to make outright gifts to their children or grandchildren as they worry that such gifts may incentivize them to stop working, or be lost to a divorcing spouse. In addition, many families wish to minimize the family’s estate tax burden on an intergenerational basis and making outright gifts will trap the assets in the donee’s estate. Transfers in trust can not only shield assets from your descendant’s creditors and potential divorcing spouses, such transfers can also save estate taxes in each generation, thereby minimizing Uncle Sam’s share of your family’s legacy.

Anyone thinking about taking advantage of this tax planning opportunity needs to start now, as the end of the year is almost upon us!