



The 2010 Lapse in Federal Estate and GST Taxes: Planning Issues

January 22, 2010

ESTATE TAXES

Under current law, the Federal estate tax is repealed for those who pass away in 2010 but returns in 2011 with more burdensome terms (lower exemption and higher top rate). Whether Congress will pass new legislation in 2010 to address the repeal period is uncertain, as is the content and effective date of such legislation. It is possible that legislation will be retroactive, thus eliminating the repeal. Even if the repeal remains in effect throughout 2010, state death taxes will still be due in states that impose such taxes.

CONSIDER YOUR DISPOSITIVE PLAN DURING THE REPEAL PERIOD

During this period of temporary repeal, we advise you to review your estate plan to ensure that the dispositive scheme that would take effect if you passed away during the repeal period is what you intend (i.e., that the right beneficiaries inherit your property).

CONSIDER USE OF BASIS ADJUSTMENTS DURING THE REPEAL PERIOD

Unlike the step-up in basis to fair market value that has been generally available for property included in a decedent's estate, during the repeal period, the basis of property acquired from a decedent is generally the decedent's basis in the property, with the following adjustment: up to \$4.3 million dollars may be allocated to increase the basis of assets passing in a qualifying manner. Your estate plan should be examined to ensure optimal use of such basis adjustments if you die during the repeal period. Please contact us if you would like us to review your estate plan for this purpose.

GENERATION-SKIPPING TRANSFER TAX

Under current law, the Federal generation-skipping transfer ("GST") tax does not apply to transfers made in 2010, but the GST tax will again apply to transfers made in 2011.

GIFT TAX

Federal gift tax remains in effect in 2010, but at a 35% rate (i.e., the highest Federal income tax rate).

PLANNING OPPORTUNITIES DURING THE REPEAL PERIOD

The lapse in the GST tax, along with the lower gift tax rate in 2010 versus 2011 under current law, may provide certain transfer tax planning opportunities. Please contact us if you would like us to explore such planning opportunities during the repeal period.

* * * * *

If you have any questions about the estate planning considerations described in this update, please contact Pamela L. Rollins (prollins@stblaw.com; 212-455-3468), Laura M. Twomey (ltwomey@stblaw.com; 212-455-3120) or any other member of our Personal Planning Department.

IRS Circular 230 disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that any tax advice contained in this communication (including any attachments) was not intended or written to be used, and cannot be used, for the purpose of (i) avoiding tax-related penalties under federal, state or local tax law or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

The contents of this publication are for informational purposes only. Neither this publication nor the lawyers who authored it are rendering legal or other professional advice or opinions on specific facts or matters, nor does the distribution of this publication to any person constitute the establishment of an attorney-client relationship. Simpson Thacher & Bartlett LLP assumes no liability in connection with the use of this publication.

UNITED STATES

New York

425 Lexington Avenue
New York, NY 10017
+1-212-455-2000

Los Angeles

1999 Avenue of the Stars
Los Angeles, CA 90067
+1-310-407-7500

Palo Alto

2550 Hanover Street
Palo Alto, CA 94304
+1-650-251-5000

Washington, D.C.

1155 F Street, N.W.
Washington, D.C. 20004
+1-202-636-5500

EUROPE

London

CityPoint
One Ropemaker Street
London EC2Y 9HU
England
+44-(0)20-7275-6500

ASIA

Beijing

3119 China World Tower One
1 Jianguomenwai Avenue
Beijing 100004
China
+86-10-5965-2999

Hong Kong

ICBC Tower
3 Garden Road, Central
Hong Kong
+852-2514-7600

Tokyo

Ark Mori Building
12-32, Akasaka 1-Chome
Minato-Ku, Tokyo 107-6037
Japan
+81-3-5562-6200

LATIN AMERICA

São Paulo

Av. Presidente Juscelino Kubitschek, 1455
São Paulo, SP 04543-011
Brazil
+55-11-3546-1000