

Federal Estate, Gift and Generation Skipping Transfer Tax Update

Dear clients and friends:

The repeal of the federal estate and generation skipping transfer ("GST") taxes, and the decrease in the federal gift tax rate, are scheduled to "sunset" on January 1, 2011, absent further Congressional action. Significant opportunities still exist to take advantage of the unprecedented provisions of the estate, gift and GST tax laws that are currently in place.

Estate, Gift and GST Taxes in 2010. Presently there is no federal estate tax on the estates of individuals who die in 2010, and no GST tax on transfers made in 2010. There is a federal gift tax with an exemption of \$1 million for each taxpayer, but at a maximum rate of 35% rather than the prior maximum gift tax rate of 45%. Lower gift tax rates, coupled with the lack of federal GST tax in 2010, have made lifetime gifts to grandchildren and distributions from non-GST exempt trusts attractive planning opportunities.

Retroactive Legislation. While Congress could pass legislation changing these laws retroactively for 2010, that prospect has become increasingly unlikely with the passage of time and the deaths of individuals whose estates are expected to litigate fiercely the constitutionality of any such legislation. It is possible that Congress would provide an option for estates of decedents dying in 2010 to elect between the 2009 exemption of \$3.5 million and maximum rate of 45%, or the 2010 law with no federal estate tax but less favorable capital gains tax rules.

Estate, Gift and GST Taxes in 2011 and beyond. As the law stands now, on January 1, 2011, the federal estate and GST taxes are scheduled to return, with a top rate for each tax of 55% and an exemption of only \$1 million (indexed for inflation in the case of the GST tax). The top gift tax rate will increase to 55% with a \$1 million exemption. The scheduled return of these taxes at increased rates and decreased exemptions is coupled with numerous other "sunsets" to income, estate, gift and GST tax rules that have existed since 2001.

While earlier this year there were indications that Congress had made it a priority to address the scheduled changes before the end of year, there has been no decisive legislative action. It is unclear at this point whether Congress will pass estate tax legislation before year end.

Grantor Retained Annuity Trusts. Congress has expressed on many occasions its desire to curtail the use of grantor retained annuity trusts ("GRATs"), a popular planning technique for lifetime transfers. Provisions have been included in several bills that would make the employment of GRATs less attractive in certain situations. Those provisions have yet to be enacted, but we believe that there may be a limited time period during which GRATs (particularly short term, "zeroed out" GRATs) will remain an attractive opportunity.

The temporary repeal of the federal estate and GST tax and decrease in the federal gift tax rate have created extraordinary and unique planning opportunities, but these opportunities may soon expire. We encourage you to contact us to discuss what steps you may be able to take to benefit you and your family during the final quarter of this year.

If you would like more information about this alert, please contact one of the following attorneys or call your regular Patterson contact.

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