

## On December 17, 2010, substantially new Federal estate planning laws went into effect.

**W**ith much publicity, Congress recently passed the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (the “Act”), which President Obama signed into law on December 17, 2010. This Alert focuses on the tax changes relevant to estates and trusts as well as planning opportunities resulting from the Act. If you would like to discuss how this new legislation affects you and your estate, please call our office to schedule an appointment with one of our estate planning attorneys.

**1. Estate Tax Exemption Increased.** For deaths occurring in 2011 and 2012, the estate tax exemption amount will be increased to \$5 million in 2011, and \$5 million indexed for inflation in 2012. The maximum estate tax rate for 2011 and 2012 is reduced to 35%. For deaths occurring in 2013 and beyond, the current law will sunset (as the Bush-era tax cuts were set to sunset in 2011), and the estate tax exemption amount of \$1 million will return. The lower estate tax rate will also sunset in 2013, resulting in the return of the maximum estate tax rate of 55%.

**2. Estate Tax Election for 2010.** For deaths occurring in 2010, a decedent’s estate may elect to either (a) pay estate tax under the new 2011 rules, with a \$5 million estate tax exemption amount and a 35% tax rate, and thereby receive a stepped-up income tax basis for assets of the estate, or (b) pay no estate

tax and be subject to the modified carryover income tax basis rules previously in effect for 2010. An estate must affirmatively elect to be subject to option (b) by timely filing the appropriate form; otherwise the estate is deemed to have elected to pay tax under option (a).

**3. Portability of Unused Estate Tax Exemption to Surviving Spouse.** For deaths occurring in 2011 and 2012, any unused estate tax exemption from the first spouse to die may be transferred to the surviving spouse to increase the surviving spouse’s estate tax exemption at death. To apply, the first spouse to die must have died in 2011 or 2012, and because this “portability” provision will also sunset in 2013, the

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surviving spouse may also have to die in 2011 or 2012 for this benefit to take effect. The Act contains certain limitations on receiving the exemption when the surviving spouse has survived more than one spouse.

**4. Gift Tax Changes.** The 2010 gift tax exemption and tax rate remain at \$1 million and 35% respectively. For 2011 and 2012, the gift tax exemption will be

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unified with the estate tax exemption described above, effectively giving you the ability to either give the amount of the exemption away during life or at death. In other words, any of the \$5 million you give away during life (\$5 million adjusted for inflation in 2012) will reduce, dollar for dollar, the amount of money you can give away at death. For 2013 and beyond, the gift tax exemption will return to \$1 million and the 55% maximum tax rate will return.

**5. Generation-Skipping Transfer Tax Changes.** The Generation-Skipping Transfer Tax (the “GST”) exemption is \$5 million for 2010 and the GST tax rate for 2010 is 0%. Because the new law makes clear that the generation-skipping tax laws apply in 2010 even though there is no generation-skipping tax for that year, the law now provides much greater certainty with respect to generation-skipping transfers in 2010 than was provided under the old law. The GST exemption and rate is the same as the estate tax exemption and rate for 2011 and 2012, providing for an exemption of \$5 million for 2011 and \$5 million indexed for inflation for 2012, and a tax rate of 35%. These changes will also sunset in 2013, resulting in a \$1 million GST exemption (as indexed for inflation since 1997) and a 55% tax rate.

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