

## Federal Estate, Gift, and Generation Skipping Transfer Taxes in 2010

In the absence of any action by Congress, current federal tax law provides that estate and generation-skipping transfer (“GST”) taxes will be repealed for one year in 2010, after which the taxes will return with a maximum estate tax rate of 55% and with an exclusion of only \$1 million. The changes that will take effect on January 1, 2010, include the following:

- There will be no federal estate tax for individuals who die in 2010.
- There will be no GST tax in 2010.
- The federal gift tax will remain, but with a maximum rate of 35%, and the lifetime gift tax exemption remains at \$1 million.
- Those receiving property from an individual who dies in 2010 will not receive a “stepped-up” basis for federal income tax purposes and will instead receive a “carryover” basis in such property (the same basis the deceased individual had at the time of his or her death).

It was largely expected that Congress would act prior to December 31, 2009, to pass legislation that would avoid the repeal and extend the top estate and GST tax rate of 45% and \$3.5 million exemption that exists for individuals who die in 2009. While the House passed such a bill, the Senate has not acted on it, and Congress has adjourned until 2010. It is also possible that Congress will pass legislation in 2010 that will be retroactive for the estates of all individuals dying on or after January 1, 2010. The inaction of Congress prior to December 31, 2009, and the ongoing uncertainty of legislative action, may suggest alternate planning strategies for some individuals.

We invite you to contact us regarding your current estate plan to ensure that any existing documents properly account for changes that may take effect in 2010 and to discuss any possible planning opportunities.

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