

WEALTH PRESERVATION AND TAX PLANNING ALERT

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2010 Tax Relief Act

On December 17, 2010, President Obama signed into law the *Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010* (the "2010 Tax Relief Act"), which provides for significant estate, gift and generation-skipping transfer ("GST") tax relief in 2011 and 2012, as well as estate and GST tax changes which apply in 2010.

The 2010 Tax Relief Act also, (i) extends the Bush-era tax cuts (including capital gains and qualified dividends) for two years (2011 and 2012); (ii) includes new tax breaks for individuals and businesses; and (iii) includes a 2% employee (and self-employed) payroll tax cut. Set forth below is a summary of some of these changes:

Temporary Estate, Gift and Generation-Skipping Transfer (GST) Tax Relief

- For decedents dying in 2010, there is a retroactive reinstatement of the estate and GST tax, with a maximum estate tax rate of 35% (the GST tax rate for transfers made in 2010 is 0%), an exclusion amount of \$5 million, and a retroactive repeal of the modified carryover basis rules unless the executor elects to "opt out" of the rules imposed by the Tax Relief Act of 2010, in which case there will be no estate or GST tax in 2010 and the modified carryover basis

rules will apply.

- For decedents dying in 2011 or 2012, the Tax Relief Act of 2010 reduces the maximum estate and GST tax rate to 35% (which is the same maximum rate applicable to gift taxes) and increases the maximum exclusion amount for estate, gift and GST taxes to \$5 million. This \$5 million exclusion amount will be indexed for inflation starting in 2012. Under certain "portability" provisions contained in the new law, with respect to a surviving spouse whose spouse dies after 2010, the Tax Relief Act of 2010 allows that surviving spouse to use his or her deceased spouse's unused exclusion amount, in addition to the surviving spouse's own exclusion amount, for lifetime gifts or for transfers at death. It is important to note, however, that these "portability" provisions do not apply with respect to a deceased spouse's unused GST exemption amount and that, in the absence of future tax legislation, these "portability" provisions no longer apply for persons dying after 2012.
- For decedents dying after 2012, the Tax Relief Act of 2010 will no longer apply but, rather, the provisions of the old tax law will, in the absence of future tax legislation, apply, resulting in a maximum estate and gift tax rate of 55% and a maximum

exclusion amount of \$1 million. In addition, as previously noted, there will no longer be any "portability" of unused exclusion amounts from a deceased spouse to his or her surviving spouse in the absence of future tax legislation extending this portability to tax years after 2012.

- For gifts made in 2011 and 2012, the Tax Relief Act of 2010 "reunifies" the gift tax exemption with the estate tax exemption. Accordingly, the gift tax exemption is increased to \$5 million from \$1 million. Without any further action by Congress, this relief will expire and the old \$1 million exemption will be applicable in 2013 and thereafter for gifts and estates.

Temporary Extension of Bush Tax Cuts and Other Income Tax Relief

- Individual income tax rates will remain the same for 2011 and 2012: 10%, 15%, 25%, 28%, 33% and 35%.
- Income tax rates on trusts and estates will remain the same for 2011 and 2012: 25%, 28%, 33% and 35%.
- Favorable income tax rates on capital gains and qualified dividends will remain the same for 2011 and 2012: 0% for taxpayers in the 10% or 15% tax brackets and 15% for taxpayers

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(continued from previous page)

- in higher tax brackets.
- Increased exemption amount for alternative minimum tax (AMT) purposes for 2010 and 2011.
- Non-phaseout of personal exemptions for 2011 and 2012.
- Nonapplicability of certain limitations on itemized deductions for 2011 and 2012.
- Extension of expanded child tax credit of \$1,000 for 2011 and 2012.
- Extension of expanded earned income tax credit for 2011 and 2012.
- Extension of expanded dependent care tax credit for 2011 and 2012.

Temporary Reinstatement and Extension of Tax Breaks for Individuals

- Deduction of state and local sales taxes for 2010 and 2011.
- Above-the-line deduction for qualified tuition and related expenses for 2010 and 2011.
- New energy-efficient home credit has been extended for 2010 and 2011.
- Tax-free distributions of up to \$100,000 from individual retirement plans (IRAs) to eligible charities for 2010 and 2011, after the individual for whose benefit the plan has been maintained has attained at least age 70 1/2. These distributions are considered as part of the individual's required minimum distribution. In addition, a taxpayer can elect to treat such

a qualified charitable distribution made in January of 2011 as having been made on December 31, 2010 (i.e., as having been made in the taxpayer's 2010 tax year).

Temporary Reinstatement and Extension of Tax Breaks for Businesses

- Research tax credit for 2010 and 2011.
- 15-year write-off for qualified leasehold improvements, qualified restaurant buildings and improvements, and qualified retail improvements placed in service in 2010 or 2011.
- Reinstatement of expensing of environmental remediation costs for 2010 and 2011.
- Reinstatement of Subpart F exclusion for certain active financing income for 2010 and 2011.
- Reinstatement of the "look-through" rule for payments between related controlled foreign corporations (CFCs) under the foreign personal holding company income rules for 2010 and 2011.

Temporary Extension of Investment Incentives

- Extension of 50% bonus depreciation for qualified property placed in service in 2011 or 2012 (or in 2013 for certain longer-lived and transportation property).
- 100% deduction (in lieu of 50%

bonus depreciation) for qualified property placed in service after September 8, 2010 and before January 1, 2012 (or before January 1, 2013 for certain longer-lived and transportation property).

- Increase in the maximum expensing amount under Code Section 179 from \$25,000 to \$125,000 (indexed for inflation), and an increase in the phase-out amount from \$200,000 to \$500,000 (indexed for inflation), for the taxable year 2012. Under existing tax law, the maximum expensing amount under Code Section 179 is \$500,000 for 2010 and 2011, and the phase-out amount is \$2 million for 2010 and 2011; prior to the 2010 Tax Relief Act, those amounts were scheduled to go to \$25,000 and \$200,000, respectively, for tax years beginning in 2012. For tax years beginning after 2012, the maximum expensing amount under Code Section 179 goes back to \$25,000, and the phase-out amount goes back to \$200,000.

Temporary Employee (and Self-Employed) Payroll Tax Cut

- For 2011, there will be a 2% reduction in the employee's portion of the Old Age, Survivors and Disability Insurance (OASDI) payroll tax (i.e., the Social Security tax) from 6.2% to 4.2% - the employer's payroll tax rate

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(continued from previous page)

remains the same. For 2011, this OASDI payroll tax will apply to the first \$106,800 of wages.

- A similar 2% reduction will apply in 2011 for self-employed individuals.

The above summary is not intended to be an exhaustive explanation of the tax provisions of the Tax Relief Act of 2010, but rather is intended to highlight some of the more important provisions.

Next month, we will be issuing a Tax Alert discussing in more detail estate, gift and GST tax-planning strategies and opportunities under the new law. If you would like to learn more about any of these provisions and how they may affect your particular situation, please do not hesitate to contact any member of our Wealth Preservation and Tax Planning Group listed below. ■

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