

## Changes to Federal Estate, Gift and Generation-Skipping Transfer Tax Rules Under the New 2010 Tax Law

President Obama signed on December 17, 2010 "The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010" (the "2010 Tax Law"), which clarifies the federal estate, gift and generation-skipping transfer ("GST") tax rules for 2010 and significantly changes those rules in 2011 and 2012. You should review your current estate plan in light of these changes. The 2010 Tax Law creates significant planning opportunities to consider in 2011 and 2012.

### Clarification of 2010 Rules

For individuals who died in 2010, the estate tax exclusion amount is \$5 million and the maximum estate tax rate is 35%. Estate property receives a fair market value basis as of the date of a

decedent's death. Alternatively, the executor may elect out of the estate tax, in which case the basis in estate property will be determined under the 2010 modified carryover basis rules.

### Happy New Year!

In 2011 and 2012, the estate, gift and GST maximum tax rates are all unified at 35% and the gift, estate, and GST tax exclusion amounts are increased to \$5 million per individual (\$10 million per married couple). This means that regardless of the total amount of lifetime gifts made prior to 2011, you are able to give an additional \$4 million in tax free gifts. You may want to consider taking advantage of this increase in the lifetime exclusions by making gifts over the next two years.

The estate tax exclusion—but not the GST tax exclusion—is “portable” between spouses in 2011 and 2012. This means that any exclusion remaining at one spouse’s death can be used by the surviving spouse if an election is made by the executor of the deceased spouse’s estate. For most of our clients, “portability” will not alter their estate planning strategies.

We recommend that you review any formula clauses in your estate planning documents to confirm you are comfortable with the results of these formulas under the new legislation.

## 2013 and Beyond

The new provisions are scheduled to sunset after December 31, 2012. Without additional Congressional action, the law in 2013 will revert back to the 2001 rules, which means \$1 million exclusions, 55% estate, gift and GST maximum tax rates, and no portability of the estate tax exclusion between spouses.

## GRATs (and CLATs) Are Still GREAT (LLCs and FLPs Are OK Too)

In addition, the 2010 Tax Law does not modify the rules related to grantor retained annuity trusts (“GRATs”). Therefore, with applicable rates still low (2.4% for January 2011), you should

consider funding GRATs with appreciating assets before the rates go up.

Charitable Lead Annuity Trusts (CLATs) are a powerful planning technique for clients who have charitable goals, and they are especially advantageous if created before March 1, 2011.

Finally, the 2010 Tax Law does not restrict the use of Family Limited Liability Companies (LLCs) and Family Limited Partnerships (FLPs) in estate planning.



This update is a general summary of the 2010 Tax Law as it relates to transfer taxes. If you have any further questions regarding the new tax law or if you want to review the effect of the new tax law on your existing estate plan, please contact your Dechert LLP Private Client lawyer.

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## Practice group contacts

If you have questions regarding the information in this legal update, please contact the Dechert attorney with whom you regularly work, or any of the attorneys or professionals listed. Visit us at [www.dechert.com/privateclient](http://www.dechert.com/privateclient).

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