PERSONAL PLANNING
Alert December 2010

Federal Estate, Gift and Generation Skipping Transfer Tax Update

Dear clients and friends:

On December 17, 2010, President Obama signed into law the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010 ("TRA 2010"). The new legislation makes several significant changes to the estate, gift and generation-skipping transfer ("GST") tax laws for 2010, 2011 and 2012. Of immediate importance, the new law enhances the ability to make tax efficient transfers to grandchildren in trust before the end of 2010. We have summarized below some of the main provisions of the new law.

Gift and GST Taxes in 2010. There continues to be a federal gift tax for 2010 with an exemption of $1 million for each taxpayer and a maximum rate of 35%. The GST tax was previously repealed for 2010, and we have in many cases recommended outright gifts to grandchildren and outright distributions from non-GST exempt trusts for this reason. Though the new legislation reinstates the GST tax for 2010, these transfers remain attractive planning opportunities until year-end because, pursuant to TRA 2010, the GST tax rate will be zero for the remainder of the year. In addition, the legislation has introduced the opportunity to make gifts in trust for grandchildren and more remote descendants that should not be subject to GST tax when distributions are made to grandchildren in later years. This is an opportunity that will exist only until the end of 2010. It will be necessary to opt out of the allocation of GST exemption on a gift tax return.

Estates of individuals dying in 2010. The estate tax was previously repealed for 2010. TRA 2010 reinstates the tax with a $5 million exemption and a 35% maximum rate. Estates of individuals dying in 2010 will have an option to elect between the application of the estate tax with a $5 million exemption, a maximum rate of 35% and a full step-up in basis for income tax purposes, or no estate tax but a carryover basis for income tax purposes. There is also a $5 million GST exemption. We will continue to monitor changes in the law and IRS guidance to provide tax-efficient advice to these estates.

Estate, Gift and GST Taxes in 2011 and 2012. On January 1, 2011, the gift tax exemption will increase to $5 million, and will be adjusted for inflation after 2011. An individual's available gift tax exemption will be reduced by any gift tax exemption previously used. The GST exemption will also be $5 million with an inflation adjustment. The maximum rate for these taxes will be 35%. Together, these provisions are a significant change in the law that will offer opportunities for major lifetime transfers in 2011 and 2012.

For estates of individuals dying on or after January 1, 2011, the estate tax exemption will continue to be $5 million with an inflation adjustment after 2011. In addition, there will be "portability" of estate tax exemption, so that a surviving spouse may use the remaining portion of a deceased spouse's unused estate tax exemption. Nonetheless, careful planning will be required to ensure a flexible and tax-efficient plan that takes into account both the estate tax and GST exemptions. In many cases relying on portability will not produce the most tax advantageous results for a family.

The decreased rates and increased exemptions for estate, gift and GST taxes are scheduled to sunset at the end of 2012.

Patterson Belknap Webb & Tyler LLP

1133 Avenue of the Americas New York, NY 10036-6710 212.336.2000 www.pbwt.com

Grantor Retained Annuity Trusts. While 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, TRA 2010 has not limited the use of GRATs. With interest rates at an all-time low, this is an ideal time to create GRATs.

* * *

The Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010 offers additional extraordinary and unique planning opportunities, some of which will expire at the end of 2010, and some of which are scheduled to begin on January 1, 2011. We encourage you to contact us to discuss what steps you may be able to take to benefit you and your family. In addition, the change in exemption amounts will impact documents in which formulas are used, as is true of many wills and trusts. We encourage you to review your current estate plan to determine how this may affect you. ◆

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

Christopher C. Angell	**212.336.2770**	**ccangell@pbwt.com**
Michael S. Arlein	**212.336.2588**	**msarlein@pbwt.com**
Janet L. Blakeman	**212.336.2525**	**jlblakeman@pbwt.com**
Susan F. Bloom	**212.336.2976**	**sfbloom@pbwt.com**
Hugh J. Freund	**212.336.2370**	**hjfreund@pbwt.com**
Carolyn B. Handler	**212.336.2480**	**cbhandler@pbwt.com**
Dana W. Hiscock	**212.336.2290**	**dwhiscock@pbwt.com**
John Sare	**212.336.2760**	**jsare@pbwt.com**
Catherine G. Schmidt	**212.336.2116**	**cgschmidt@pbwt.com**