

# ADVISORY

## SULLIVAN & WORCESTER LLP TRUSTS & ESTATES GROUP

### ESTATE TAX ADVISORY

The new year began without the expected legislation from Congress extending the 2009 federal estate, generation-skipping transfer (GST) and gift tax laws into 2010. Congressional leaders have indicated that they intend to address the estate, GST and gift tax in 2010 and it is possible that any legislation passed will be retroactive to January 1, 2010. The following summarizes the federal laws in effect absent such legislation.

#### ESTATE AND GST TAX IN 2010

Unless and until Congress acts, as of January 1, 2010, there is no federal estate tax for individuals who die in 2010 and no GST tax on transfers made in 2010.

#### GIFT TAX IN 2010

In 2010, each individual continues to have a \$1 million lifetime gift tax exemption but the maximum tax rate on taxable gifts made in 2010 is reduced from 45% to 35%. The annual gift tax exclusion for gifts up to \$13,000 to any individual remains unchanged.

#### INCOME TAX BASIS IN 2010

Without the federal estate tax in 2010, the tax basis of property owned by an individual who dies in 2010 will no longer be automatically "stepped-up" for income tax purposes to its value as of the individual's date of death. Instead, an executor can allocate up to \$3 million in basis to appreciated assets that pass to or for a surviving spouse and an additional \$1.3 million in basis to appreciated assets passing to or for other individuals. Otherwise, those who receive property from an individual's estate will take a "carry-over" basis (i.e., the lesser of the fair market value of the property on the date of death or the decedent's basis in the property), which may cause an increase in future capital gains recognized.

#### 2011

In 2011, under existing law, the estate tax, GST tax and gift tax will revert to 2001 levels, with reduced estate tax and GST tax exemptions (\$1 million each) and higher maximum tax rates (55% for the estate tax and gift tax). The lifetime gift tax exemption remains at \$1 million. With the return of the estate tax, the regular basis step-up rules would again apply.

#### STATE LAWS

Generally, state laws regarding estate, GST and gift taxes are not affected by these developments in the federal law. For example, estate taxes in Massachusetts, New York, Connecticut and New Jersey are unchanged, as is the gift tax in Connecticut.

#### CONGRESSIONAL ACTION

It is expected that Congress will act this year to reinstate the estate tax and GST tax. Congress may seek to enact new estate, GST and gift tax laws retroactive to January 1, 2010, although there is a question as to its authority to do so. In the meantime, there may be opportunities regarding generation-skipping transfers, but given the potential for taxes to be reinstated retroactively, there is some risk in altering your estate planning documents or making transfers based on the current law.

Please do not hesitate to contact your estate planning attorney to discuss your estate plan, how it might be affected by these developments and any planning opportunities that might arise.

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