TRUSTS & ESTATES LAW UPDATE

JANUARY 2012

Updates and Planning Opportunities

As we previously reported, as a result of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, the gift and estate tax exclusion amount and generation-skipping transfer ("GST") tax exemption has been increased through December 31, 2012 to $5 million per individual or $10 million for a married couple. Once again, and a result of the sunset provisions contained in the last Tax Act, after December 31, 2012, the estate and gift tax exclusion amount is scheduled to revert to a level of $1 million per individual, the GST tax exemption is reduced to $1 million and the gift and GST tax rates are scheduled to increase from 35% to 55%.

New proposals by the House Ways and Means Committee Democratic staff propose decreasing the exemption amount to 2009 levels. In 2009, the gift tax exclusion amount was $1 million and the estate and GST tax exemption was $3.5 million. In light of these developments, if you wish to take advantage of the current increased gift tax exclusion amount of $5 million and/or GST tax exemption amount, we encourage you to do so as soon as possible. We would be pleased to discuss with you the various ways in which you can make optimum use of these exemptions.

Low Interest Rates Beneficial for GRATs and Intra-Family Loans

The IRS interest rate applicable to GRATs and charitable lead trusts are the lowest it has been since the inception of the applicable rate in 1989. If you have investments that are likely to outperform this interest rate, now is an excellent time to create a GRAT or charitable lead trust in order to transfer the appreciation in excess of the interest rate gift tax-free.

Similarly, the applicable federal rates ("AFRs") for intra-family loans are at or near historic lows — 0.19% for a loan with a term of 3 years or less, 1.17% for a loan with a term of 9 years or less and 2.60% for a loan with a term of more than 9 years, in each case compounding annually. It would be appropriate now to consider making intra-family loans or refinancing existing loans at these low rates.

Inflation Adjustments for 2012 Exclusion Amounts

The current estate, gift and GST tax provisions, the estate/gift tax applicable exclusion amount and GST tax exemption are subject to inflationary adjustments. The IRS has recently released updated exclusion/exemption amounts for 2012 to reflect inflation adjustments. The estate tax applicable exclusion amount, which is the amount of an individual's estate that can pass free of estate tax at death, is increased

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to $5,120,000 (reduced by the amount of any lifetime taxable gifts) for an individual dying during calendar year 2012, up from $5,000,000 in 2011. The gift tax applicable exclusion amount and GST tax exemption are similarly increased to $5,120,000 for 2012. If Congress does not act, each of these exclusion amounts will decrease to $1,000,000 in 2013.

The gift tax annual exclusion amount, which is the amount that an individual can give gift-tax free to one or more individuals during the calendar year, remains the same at $13,000 per year per recipient (or $26,000 per year if spouses elect to "split" gifts).

State Estate Tax Laws

Residents of both New Jersey and New York still have other concerns – the state estate tax. In New Jersey, the state exemption amount remains at $675,000 and in New York the state exemption amount remains at $1 million. This means that residents of those states may be subject to state estate tax even if there is no federal estate tax. While the state estate taxes are not as burdensome as the federal tax, they remain substantial nonetheless. For example, in 2012 an estate of $3.5 million will pay $229,200 to New Jersey and no tax to the federal government. Therefore, despite the relaxation of the federal estate tax, the overall cost of estate taxes will remain a concern for many.

What these changes mean to you?

Your estate plan will now need to address the present tax laws and should anticipate any future changes and make provisions to take advantage of the tax benefits they offer. The new law will affect virtually every estate plan. Several of you will find that the new law will allow you to plan your estates without great concern for estate taxes. Others will find that your estate plans must now anticipate two or three different sets of rules.

While there may be questions regarding the expiration of the law in 2012 and the impact of estate planning in the future, there are planning opportunities that may only be available for the next two years. There are now also opportunities to make significant wealth transfers that will eliminate or greatly reduce transfer taxes in many estates.

It is critical that all estate planning documents and overall estate plan be reviewed in light of the Act in order to avoid unwanted estate tax and asset transfer consequences and to maximize the benefits available under the new law. This is also an appropriate time to review the ownership of your assets to confirm that the manner in which you own your assets is coordinated with your estate planning documents. In addition, this may also be a good time to confirm who the beneficiaries are of your retirement plans and life insurance policies to ensure that they to are consistent with your estate planning objectives.

Contact Us

If you are uncertain as to whether you need to make changes to your plan given the recent changes, please feel free to call us at 732.219.5489 or via email at tdengler@ghclaw.com or rrinninsland@ghclaw.com.

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