family MATTERS

February 2011 [*Forward to a Friend*]

Tips For Planning In 2011-2012

In last month's newsletter, I described the new estate, GST, and gift tax rules for 2011-2012. But how do they affect you? Should you keep your Exemption Trust in place or draft a new Disclaimer Trust? How can you take advantage of the new gifting rules? Read on ...

(1) The 2010 Act increased the gift tax exemption amount to $5 million for the next two years. As a general matter, it usually is best to use an exemption as early as it becomes available. Not only does the gifted property escape later estate, gift, or GST taxes, but so do any income and appreciation. Given the depressed market, certain assets will likely see enormous appreciation in the coming years. Gifts to grantor trusts (the income of which is attributed to the grantor or creator of the trust) can be especially appealing because the trust will grow income tax free. Consult your estate planning attorney for guidance because navigating these rules can be highly technical. But the gist is that, if you can afford to make substantial gifts, you might want to get started now.

(2) The 2010 Act also increased the estate tax exemption amount to $5 million and added a portability feature that allows the surviving spouse to use the unused estate tax exemption of the first spouse to die. Some estate planners have concluded that anyone with an Exemption Trust (or Bypass Trust) should therefore get a Disclaimer Trust so that the surviving spouse can fully take advantage of the portability feature. This is not necessarily the case. An Exemption Trust still provides added protection in case the surviving spouse remarries, it still provides creditor protection for all trust beneficiaries, and it still shelters all appreciation of trust assets from future estate tax. Again, it is important to consult with your estate planning attorney for additional guidance and to revisit your estate plan in light of these new rules.

(3) Contrary to virtually all predictions, Congress did retroactively reinstate the estate tax for 2010. But it also gave decedents dying last year (actually, their executors) the ability to opt out of the reinstated estate tax. Therefore, if you are the executor (or beneficiary or heir) of someone who died in 2010, you need to decide whether it makes more sense to elect out of the estate tax and be subject to a "modified carryover basis regime" or stick with the new laws and enjoy a fully stepped up basis. These are complicated and highly technical rules, so -- you guessed it -- consult with your estate planning attorney for guidance.

Estate Tax Timeline: Summary

2010	2011	2012	2013
Estate Tax •35 % top tax rate or election to forego tax •$5mm exemption	•35% tax rate •$5mm exemption	•35% tax rate •$5mm exemption (to be indexed for inflation)	•55% top tax rate •$1mm exemption
GST Tax •0% tax rate •$5mm exemption	•35% tax rate •$5mm exemption	•35% tax rate •$5mm exemption (to be indexed for inflation)	•55% top tax rate •$1.4mm exemption (currently indexed for inflation; this is a rough estimate)
Gift Tax •35% taxrate •$1mm exemption	•35% taxrate •$5mm exemption	•35% tax rate •$5mm exemption (to be indexed for inflation)	•55% top tax rate •$1mm exemption

Stay tuned for next month's newsletter . . .

Tali Z. Klapach
Klapach & Klapach
8200 Wilshire Boulevard, Suite 300
Beverly Hills, California 90211
Tel. (310) 424-3144
Fax (310) 728-1779
Tali@KlapachLaw.com
www.KlapachLaw.com

About Tali Klapach

Tali Klapach is a partner at Klapach & Klapach. She graduated from Princeton University and Yale Law School and clerked for the Chief Judge of the United States Second Circuit Court of Appeals. After practicing law for seven years at two prestigious law firms in San Francisco and Los Angeles, Tali started her own practice in trusts and estates. The goal of Klapach & Klapach is to combine the high quality service of a big law firm with the personal attention and affordability of a family lawyer. Tali is committed to building long-term relationships with clients and to serving as a source of ongoing assistance and advice. To schedule a free estate planning consultation or to subscribe to this free monthly e-Newsletter, please visitwww.KlapachLaw.com or call (310) 424-3144. Estate Planning for a Lifetime.®