THE NEW TAX LAW
"USE IT OR LOSE IT"

On December 17, 2010, President Obama signed into law The Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010 ("the Act"). The Act provides much needed clarity and some certainty regarding lifetime transfers and estate taxes—but only through 2012.

Womble Carlyle has followed the progress and content of this legislation from committee through enactment. <u>Changes in the law created by the Act may affect your year-end planning decisions.</u>

Prior to Year-End. We recommend that certain estate planning transactions be considered *immediately*:

- Defer 2010 gifts to individuals in excess of your available $1,000,000 lifetime gift tax exemption until 2011 when you will receive an additional $4,000,000 gift tax exemption;

- However, if you wish to make LARGE gifts (outright or in trust) to ***grandchildren*** and ***great grandchildren*** in excess of $4,000,000, consider making those gifts in 2010 (but definitely contact us immediately to discuss this option).

- Distributing assets from generation skipping trusts in 2010 may be beneficial (however, special rules apply—please call us to discuss details).

- Make annual exclusion gifts of $13,000 per person before January 1, 2011.

- If you still have some or all of your $1,000,000 lifetime gift tax exemption, you may use the exemption this year through gifts to individuals (outright or in trust) and no gift tax or generation-skipping tax ("GST") applies.

Estate, Gift and Generation-Skipping Tax (GST) Provisions of the Act. The following is a brief summary of key aspects of the Act for your consideration:

I. <u>Impact on the Estates of Decedents Dying in 2010:</u>

- The Act temporarily reinstates and modifies the estate and generation-skipping taxes retroactive to January 1, 2010. The applicable estate tax exemption amount is $5,000,000 and estate tax rate is 35%.

- Estates of decedents dying in 2010 may elect out of the new Act and apply a zero estate tax rate and modified carryover basis. The Executor may allocate $1,300,000 of "basis step up" to any assets in the estate and an additional $3,000,000 of basis to assets passing to a surviving spouse.

- The one year repeal of GST is eliminated. For 2010, GST applies retroactively but with a $5,000,000 exemption and a ZERO tax rate.

II. New Rules for Estate, Gift and Generation-Skipping Transfers in 2011 and 2012:

Estate Tax:
- Maximum estate tax rate: 35%
- Estate tax exemption: $5 million (indexed for post-2010 inflation)
- State death tax deduction still applies

Gift Tax:
- Maximum gift tax rate: 35%
- Lifetime gift tax exemption: $5 million

Tax on Transfers that Skip a Generation (GST Tax):
- Maximum GST tax rate: 35%
- GST exemption: $5 million

Portability: Applicable to married couples—if a spouse dies during 2011 or 2012, the surviving spouse may use the unused portion of his or her deceased spouse's $5 million estate tax exemption or gift tax exemption (NOT the GST exemption). An election by the Executor of the deceased spouse is required on a timely filed estate tax return in order for the surviving spouse to make use of the deceased spouse's unused exemption.

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In January of 2011, we will begin a new series of Client Alerts designed to outline many unprecedented estate, gift and GST planning opportunities available to you during the next two years.

As always, please contact any of our attorneys in the Trusts & Estates practice group to discuss year-end planning recommendations or questions that you may have about the Act by visiting our web site at http://www.wcsr.com/teams/trusts--estates.