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TAX ALERT

NEW FEDERAL TAX LAW PRESENTS WEALTH-TRANSFER OPPORTUNITIES

On December 17, 2010, President Obama signed the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (the "Act") into law. In addition to extending temporarily the Bush-era income tax cuts for individuals for two years, the Act makes significant changes to the federal estate, gift and generation-skipping transfer ("GST") tax laws for 2011 and 2012. Below is a brief summary of some of the major tax provisions of the Act that may provide new estate planning opportunities for you and may require you to revise your current estate plan.

The Act makes the following significant changes to the estate, gift and GST tax regimes:

- The federal estate tax exemption amount is increased to $5 million per individual, the highest it has ever been. Amounts in excess of the estate tax exemption amount are taxed at a maximum rate of 35 percent, a lower rate than has applied in at least a generation.
- The federal gift tax exemption is "unified" with the estate tax exemption amount, which means that an individual has a total exemption of $5 million that can be applied against lifetime gifts or dispositions payable at death, such as bequests. Amounts in excess of the gift tax exemption amount are taxed at a rate of 35 percent.
- The federal estate exemption amount is "portable" between spouses, which means that if the first spouse to die has not used up his or her entire $5 million estate and gift tax exemption amount, the unused exemption can be used by the surviving spouse.
- The federal GST tax exemption amount is also increased to $5 million per individual. Amounts in excess of the exemption amount are also taxed at a rate of 35 percent.

Estate, Gift and Generation-Skipping Transfer Taxes under the Act		
	2011 & 2012	**2013** (unless changed by a new law)
Estate Tax Exemption:	$5,000,000	$1,000,000
Estate Tax Rate:	35%	55% (plus a 5% additional estate tax on estates in a certain range)
Gift Tax Exemption:	$5,000,000	$1,000,000
Gift Tax Rate:	35%	55%
GST Tax Exemption:	$5,000,000	$1,000,000
GST Tax Rate:	35%	55%

(Please see next page for more information.)

Donors continue to be able to use the annual gift tax exclusion before having to use any part of their federal gift tax exemption. For 2011, the annual exclusion amount is $13,000 per donee (married couples may continue to "split" their gift and make combined gifts of $26,000 per donee).

As a result of these increases in federal exemptions, individuals now have opportunities to make lifetime transfers of up to $5 million (or $10 million per couple) without having to pay any federal gift or GST taxes. Such individuals may wish to take advantage of one or more wealth-transfer planning strategies, such as:

- Outright gifts to children and more remote descendants, or to trusts for their benefit.
- Outright gift to a spouse who is not a U.S. citizen or to a significant other, or to a trust for the benefit of such spouse or significant other.
- Transfers and sales to trusts known as "grantor trusts," which are trusts of which all of the income is taxable to the transferor (also known as the "grantor"). Grantor trusts are extremely powerful wealth-transfer tools because the payment of income taxes by the grantor enables the trust property to grow income tax free for the trust beneficiaries while reducing the grantor's estate.
- Transfers to life insurance trusts in order to fund future premium payments.
- Transfers of assets that are likely to appreciate to a Grantor Retained Annuity Trust (also known as a "GRAT").
- Transfers of assets that may be subject to lack of marketability and lack of control discounts (e.g., interests in limited liability companies or limited partnerships) in order to leverage the increased gift tax and GST tax exemptions.

Despite the Act's sweeping changes, it is important to note that the Act does not affect state estate, gift and GST taxes (e.g., New York continues to impose an estate tax of as much as 16 percent on New York residents whose taxable estates exceed $1 million; New York does not impose a gift tax).

We recommend that you have your current estate planning documents reviewed to determine how the changes made by the Act may significantly impact your estate plan. You also may want to take advantage of these new wealth-transfer opportunities while they exist.

We invite you to contact a member of the Phillips Nizer LLP Trusts & Estates Department to discuss your present estate plan and the wealth-transfer opportunities that are newly available to you and your family.

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