

# KIRKLAND ALERT

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## *Gift and Generation-Skipping Taxes* 2010 Window of Opportunity to Expire Soon

Based on a 2001 law, the federal estate tax and generation-skipping tax (GST) were repealed and the gift tax rate was decreased to 35% for 2010. Here's how you can take advantage of both the decrease in the gift tax rate and the repeal of the GST tax:

- (1) **Gifts.** You could make a taxable gift at the 35% gift tax rate. Because gift and estate taxes are calculated differently, the effective gift tax rate is currently only 26% as compared to the estate tax rate. Without Congressional action, the gift and estate tax rates will increase to 55% in 2011. So, gifts made now will be subject to a substantially lower tax rate than is likely in the future.
- (2) **Gifts to Grandchildren.** You could make a gift directly to your grandchildren (not to a custodian or to a trust) to take advantage of the repeal of the GST tax. Such a gift would be subject to gift tax except to the extent you have lifetime gift tax exemption remaining. Nevertheless, you will have transferred property down two generations, but only paid one tax (i.e., transfers to grandchildren are ordinarily subject to *both* gift tax and GST tax). Without Congressional action, the GST tax rate will increase to 55% in 2011.
- (3) **Distributions from Trusts.** An existing trust that is *not* exempt from GST tax could distribute trust principal to your grandchildren (not to a custodian or to another trust), if permitted under the trust agreement. Such distributions will not be subject to GST tax in 2010.

*Congress may retroactively increase the 2010 gift tax rate and/or reinstate the GST tax, but we feel that such an act becomes more unlikely as we approach 2011.*

- (4) **Grantor Retained Annuity Trusts (GRATs):** Bills in both houses have included a provision requiring all GRATs to have at least a 10-year term. Such a requirement would greatly increase the mortality risk of implementing a GRAT — i.e., you must live at least 10 years for the GRAT to be successful. Currently, a GRAT may have a term as short as 2 years. GRATs created before such legislation is enacted will not be required to have a 10-year minimum term.

However, the gift, estate and GST tax laws that were in effect back in 2001 will be reinstated on January 1, 2011 unless Congress changes the law.

If you would like to discuss the potential opportunities addressed in this *Kirkland Alert*, please contact the following Kirkland author or your regular Kirkland contact.

David A. Handler, P.C.  
Kirkland & Ellis LLP  
300 North LaSalle  
Chicago, IL 60654  
[www.kirkland.com/dhandler](http://www.kirkland.com/dhandler)  
+1 (312) 862-6393

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