

## GST Issues

- \$5 million exemption in 2011 & 2012 (exemption in 2012 indexed for inflation).
- 35% GST rate in 2011 & 2012.
- Unless further legislation passed, returns to \$1 million (adjusted for inflation) exemption and 55% tax rate in 2013.
- Portability of unified credit between spouses does **not** apply to unused GST exemption amount.
- Important to file gift tax returns to make proper elections under the automatic allocation rules.
- \$13,000 annual GST exclusion available (if certain conditions are met).
- Filing Dates:

Return Reports:	File Date:
Direct skip for GST purposes	On/before due date of estate or gift tax return.
Other GST Transfers	On/ before the 15 <sup>th</sup> day of 4 <sup>th</sup> month after close of taxable year.
Taxable Termination to which election is made under IRC Sec. 2624(c) to value property in accordance with IRC Sec. 2032	The Latter of: <ul style="list-style-type: none"> <li>• On/before the 15<sup>th</sup> day of the 4<sup>th</sup> month after close of calendar year</li> <li>• On/before the 10<sup>th</sup> month following the month of death that resulted in taxable termination</li> </ul>
GST transfers after 12/31/2009 and prior to 12/17/2010	No earlier than nine months after December 17, 2010.

- **Three types of taxable transfers triggering GST tax:**
  - **Direct skip** – a transfer subject to a tax imposed by Chapter 11 or 12 of an interest in property to a “skip person.”
  - **Taxable Termination** – the termination (by death, lapse of time, release of power, or otherwise) of an interest in property held in a trust unless:
    - Immediately after such termination, a “non-skip person” has an interest in such property, or
    - At no time after such termination may a distribution (including distributions on termination) be made from such trust to a “skip person.”
 If, upon the termination of an interest in property held in trust by reason of death of a lineal descendant of transferor, a specified portion of the trust’s assets are distributed to one or more “skip persons” (or one or more trusts for the exclusive benefit of such persons), such termination shall constitute a taxable termination with respect to such portion of the trust property .
  - **Taxable Distributions** – Any distribution from a trust to a “skip person” (other than the taxable termination or a direct skip).
- **Skip person** – a natural person assigned to a generation which is two or more generations below the generation assigned of the transferor, or
  - a trust:
    - If all interests in such trust are held by “skip persons”, or
    - If:
      - There is no person holding an interest in such trust, and
      - at no time after such transfer may a distribution (including distributions on termination) be made from such trust to a non-skip person.
- **Non-skip person** – any person not a “skip person.”

## Automatic Allocation Rules

- Under the current law, certain trusts, known as “GST Trusts”, have GST exemption automatically allocated to them.
- Automatic allocation can cause an automatic allocation of GST exemption to take place in circumstances where it is not appropriate considering a person’s estate plan. In other cases, the law will *not* cause GST exemption to be automatically allocated to a trust for which such allocation *is* appropriate.
- An individual may elect out of this automatic allocation and may also elect to treat any trust as a GST trust, thereby qualifying it for automatic allocation. Such elections are to be made on a gift tax return for the year in which the gift is made to the trust.
- “GST trust” means a trust that could have a generation-skipping transfer with respect to the transferor unless:
  - the trust instrument provides that more than 25 percent of the trust corpus must be distributed to or may be withdrawn by one or more individuals who are non-skip persons—
    - before the date that the individual attains age 46,
    - on or before one or more dates specified in the trust instrument that will occur before the date that such individual attains age 46, or
    - upon the occurrence of an event that, in accordance with regulations prescribed by the Secretary, may reasonably be expected to occur before the date that such individual attains age 46,
  - the trust instrument provides that more than 25 percent of the trust corpus must be distributed to or may be withdrawn by one or more individuals who are non-skip persons and who are living on the date of death of another person identified in the instrument (by name or by class) who is more than 10 years older than such individuals,
  - the trust instrument provides that, if one or more individuals who are non-skip persons die on or before the date that the individual attains age 46, or on or before one or more dates specified in the trust instrument that will occur before the date that such individual attains age 46, more than 25 percent of the trust corpus either must be distributed to the estate or estates of one or more of such individuals or is subject to a general power of appointment exercisable by one or more of such individuals,
  - the trust is a trust any portion of which would be included in the gross estate of a non-skip person (other than the transferor) if such person died immediately after the transfer,
  - the trust is a charitable lead annuity trust (within the meaning of section 2642(e)(3)(A)) or a charitable remainder annuity trust or a charitable remainder unitrust (within the meaning of section 664(d)), or
  - the trust is a trust with respect to which a deduction was allowed under section 2522 for the amount of an interest in the form of the right to receive annual payments of a fixed percentage of the net fair market value of the trust property (determined yearly) and which is required to pay principal to a non-skip person if such person is alive when the yearly payments for which the deduction was allowed terminate.
- For purposes of determining if a trust is a “GST Trust”, the value of transferred property shall not be considered to be includible in the gross estate of a non-skip person or subject to a right of withdrawal by reason of such person holding a right to withdraw so much of such property as does not exceed the amount referred to in section 2503(b) with respect to any transferor, and it shall be assumed that powers of appointment held by non-skip persons will not be exercised.