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**Tricky GST Issues**



# Tricky GST Issues

*October 19, 2016*

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## Agenda

1. Overview of Chapter 13
2. Gift Splitting for Gift and GST Tax Purposes
3. Automatic Allocation of GST Exemption: The “Crummey” Problem
4. Estate Tax Inclusion Period
5. Portability and the Reverse QTIP
6. Payment of Estate Taxes or GST Taxes on Beneficiary’s Death
7. Multiple Skips and the Transferor Move Down Rule
8. Payment of Tuition and Medical Uses, Use of Residence
9. Survivorship Requirements
10. Basis Reporting Requirements

# 1. Overview of Chapter 13

## Generation Skipping Transfers

- Direct Skips
- Taxable Terminations
- Taxable Distributions

## Skip and Non-Skip Persons

- A skip person is any person assigned to a generation that is more than one below the generation assignment of the transferor, or a trust if all interests in the trust are held by skip persons
- A non-skip person is any person other than a skip person

## Generational Assignments

- Lineal descendants are assigned to generations based on their family ancestry
- Other persons are assigned to generations based on age

## GST Tax

- Tax Rate and GST Exemption
- Applicable Rate, Inclusion Ratio and Applicable Fraction
- Direct Skips, Taxable Terminations and Taxable Distributions

## 2. Gift Splitting for Gift and GST Purposes

- **Split Gifts for Gift Tax Purposes**
- **Split Gifts for GST Tax Purposes**

### Examples

#### Example 1

Donor transfers \$1 million to a trust for the benefit of his spouse and his children, \$100,000 of which qualifies as annual exclusion gifts to the children. The couple elects to split gifts and GST exemption is allocated to the transfer.

#### Example 2

Assume instead that on date 1 donor made a transfer of \$100,000 to the trust for his spouse and children, all of which qualifies as annual exclusion gifts to the children (“Gift 1”). In the same year on date 2, donor made another transfer of \$900,000 to the same trust (“Gift 2”), none of which qualifies as annual exclusion gifts to the children. The couple elects to split gifts and GST exemption is allocated to the trust.

### 3. Automatic Allocation of GST Exemption: The “Crummey” Problem

- **Automatic Allocation of GST Exemption to GST Trusts**

- **Estate Inclusion Exception**

- **Exception to the Estate Inclusion Exception**

#### Example

##### Year 1

John transfers \$14,000 to a new trust in which his daughter Jane has the right to withdraw a portion of each addition to the trust up to her annual exclusion amount under Code Section 2503(b) (i.e., a Crummey withdrawal right).

Jane’s withdrawal right lapses each year to the greatest extent possible to avoid being treated as the lapse of a general power of appointment (i.e., lapses by the greater of \$5,000 or 5% of the trust corpus).

Upon Jane’s death, the remaining assets pass to her children.

##### Year 2

John transfers an additional \$14,000 to the same trust.

## 4. Estate Tax Inclusion Period

- Spousal ETIP and Withdrawal Rights
- Grantor Retained Annuity Trusts

# 5. Portability and the Reverse QTIP



## 6. Estate Taxes or GST Taxes on Beneficiary's Death

### Factors to Consider

- Value of Trust Assets and Beneficiary's Other Assets
- Remaining Estate Tax Exemption
- State of Domicile
- Marital and Parental Status
- Changes to Tax Laws

## 7. Multiple Skips

- Transferor Move Down Rule
- Interest in Trust
- Absence of an Interest in Trust

## 8. Tuition and Medical Expenses, Use of Residence

- Exclusion for Tuition and Medical Payments
- Health and Education Exclusion Trust (“HEET”)
- Health, Education and Residence Trust (“HERT”)

## 9. Survivorship Provisions



- Predeceased Parent Exception
- 90-Day Rule
- 6-Month Rule

# 10. Basis Reporting Requirements

## Biography



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David A. Handler is a partner in the Trusts and Estates Practice Group of Kirkland & Ellis LLP. He is a fellow of the American College of Trust and Estate Counsel (ACTEC), a member of the NAEPC Estate Planning Hall of Fame as an Accredited Estate Planner (Distinguished), and a member of the professional advisory committees of several non-profit organizations. He is the author of numerous articles in estate planning and taxation journals, and writes the monthly “tax update” column for *Trusts & Estates Magazine*. He is one of only 16 U.S. lawyers (as of 2015) ranked in “Band 1” by *Chambers USA* in the Wealth Management category, is listed in *The Best Lawyers in America*® (Trusts and Estates) and its 2016 Trusts and Estates “Chicago Lawyer of the Year.” David is a co-author of an e-book on estate planning, *The Complete Estate Planning Sourcebook* (published by Wolters Kluwer). He is regularly interviewed for trade and news periodicals, and is a frequent lecturer at professional education seminars. David is a graduate of Northwestern University School of Law and received a B.S. Degree in Finance with highest honors from the University of Illinois College of Commerce.

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