TAX ALERT

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Fall 2011

LEGISLATIVE RISK:
The Super Committee Warrants Immediate Consideration of Your Long Term and Short Term Estate Planning by Year End

Fall is always a good time to prepare for *annual* year-end tax planning - and this year there may be an added incentive to decide on *longer range* planning objectives sooner rather than later due to the work of the 12-member Super Committee. The Super Committee is charged with finding $1.5 trillion in deficit reduction over a ten-year period. This is a unique charge: to provide the 'carrot' of deficit reduction proposals that generally appeal to both aisles of Congress, yet with a fairly persuasive 'stick' in that the consequences for not accepting the proposal are automatic spending cuts. For these reasons, and as discussed in greater detail below, it will be important for clients to not only execute annual planning early, but also seriously consider the impact that the Super Committee proposals might have on longer term strategies - because the stakes are high in terms of potential lost planning opportunities.

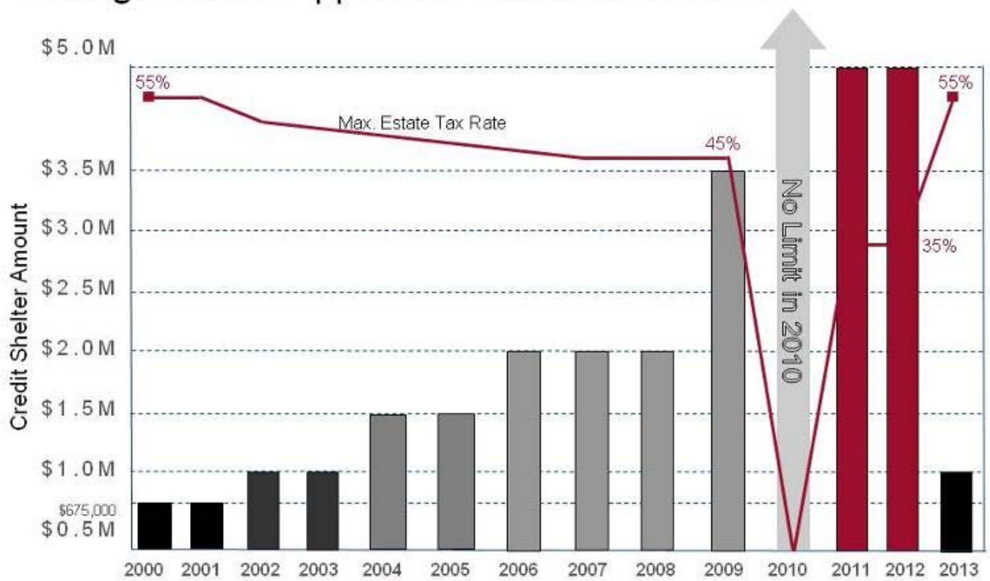
There are really two components to the committee's analysis: expenditure reduction and revenue increases. With the sense of urgency in Congress and specifically the committee, finding adjustments that are palatable to both parties is going to be difficult and politically costly. According to Dave Berek, Partner in the Advanced Planning and Family Office Practice Group at Handler Thayer, LLP, "Given the current 'Buffett Rules' tax-the-rich environment, overall tax planning and gift tax thresholds that are now available could be at risk for families. We recommend engaging in planning sooner rather than later; not much good can come from the committee's recommendations from a wealth preservation perspective."

What's at Stake

In short, we fear the increased 2012 gift tax exclusion may be at risk. Of course any prediction regarding what proposals the committee is considering is guesswork because committee meetings are private other than the three public hearings (discussed below). However, we do know the Administration's preference for recommendations. The Office of Management and Budget released the report, *Living Within Our Means and Investing in the Future, The President's Plan for Economic Growth and Deficit Reduction*, on September 19, 2011. One of those deficit reduction solutions was reducing the estate, gift and generation-skipping transfer ("GST") tax thresholds to 2009 levels ($3.5 million for Estate and GST, and $1 million for Gift).

	2009	2010	2011	2012	2013
Maximum Estate Tax Rate	45%	35% or election to forego estate tax	35%	35%	55%
GST Tax Rate	45%	0%	35%	35%	55%
Maximum Gift Tax Rate	45%	35%	35%	35%	55%
Estate Tax Exclusion	$3,500,000	$5,000,000	$5,000,000	$5,000,000	$1,000,000
Gift Tax Exclusion	$1,000,000	$1,000,000	$5,000,000	$5,000,000	$1,000,000
GST Exemption	$3,500,000	$5,000,000	$5,000,000	$5,000,000	$1,000,000
Annual Exclusion	$13,000	$13,000	$13,000	$13,000	$13,000

Changes in the Applicable Exclusion Amount



The chart shown depicts how these transfer tax thresholds fluctuate, but to put this in perspective, let's focus on the lifetime gift level. In 2009 it was $1 million, for 2011 and 2012, it is $5 million, and under the current law, without any Congressional action, it will automatically be reduced back to $1 million on January 1, 2013. Might the Super Committee seek to accelerate that reduction in 2012 to offset, for example, the cost of some other provision? One such aspirational recommendation from the Administration is for a one-year extension and expansion of the employee payroll tax holiday now in place, halving the tax rate reduced to 3.1 percent in 2012. According to the Office of Management and Budget report, "The President's plan will extend the payroll tax on the first $5 million in payroll. Next year, instead of paying 6.2 percent on their payroll expenses, firms would pay only 3.1 percent." How do you suppose they can make up that lost revenue? This is after all a deficit *reduction* committee.

The Committee

Understanding the origin of the committee is helpful to appreciate its powerful position. The Budget Control Act of 2011 passed by Congress last August included a provision calling for the creation of a special select committee of Congress. The Joint Select Committee on Deficit Reduction (also known as the Super Committee) is charged with issuing a formal recommendation on how to reduce the deficit by at least $1.5 trillion over the next 10 years.

The Joint Select Committee on Deficit Reduction is comprised of six Democrats and six Republicans - three members of each party from the Senate, and three members of each party from the House.

The Committee's website is: http://www.deficitreduction.gov/public.

Rep. Jeb Hensarling (R-Texas), Co-Chair
Rep. Dave Camp (R-Mich.)
Rep. Fred Upton (R-Mich.)
Sen. Jon Kyl (R-Ariz.)
Sen. Rob Portman (R-Ohio)
Sen. Pat Toomey (R-Pa.)

Sen. Patty Murray (D-Wash.), Co-Chair
Sen. Max Baucus (D-Mont.)
Sen. John Kerry (D-Mass.)
Rep. Xavier Becerra (D-Calif.)
Rep. James Clyburn (D-S.C.)
Rep. Chris Van Hollen (D-Md.)

The committee is expected to present its bipartisan recommendation in the form of a proposed bill to Congress on the day before Thanksgiving, November 23, 2011. Congress will then have until

December 23, 2011 to vote, or not vote, on the proposed bill without amendments. This method of "reporting out" legislation from a select committee is rather significant. The vote is an up-or-down pure majority vote in each chamber. If Congress is unable to agree on the proposed bill, automatic spending cuts will be triggered.

Although the Super Committee hearings have been public (there have been three, with the most recent taking place on Wednesday, October 26th), where the content of the committee meetings has not been made public. A number of members of Congress have voiced displeasure with the secrecy. Representative Maxine Waters, D-California, has called the committee an "illegitimate shell game [that] flies in the face of basic principles of fairness and transparency." "How can 12 people decide the fate of millions [of] Americans behind closed doors with little to no input from Congress or the average citizen?" she said. Representative Waters introduced a bill October 13, 2011 to repeal the committee.

Conclusion

In view of the potential risk of changes in estate, gift and generation-skipping transfer taxes, taxpayers should:

1. Consider accelerating planned lifetime gifts into 2011;
2. Evaluate both short-term and long-term gifting programs;
3. Consider advanced planning strategies designed to leverage and amplify the impact of the current, historic, all-time high exclusion amount;
4. Review estate tax funding mechanisms and life insurance plans; and,
5. Consider updating or revising estate plans in view of possible and planned law changes.

About Handler Thayer, LLP

Handler Thayer, LLP is one of the premier private client law firms in the United States. Its national and international practice, based out of Chicago, Illinois, utilizes interdisciplinary teams of advanced planning attorneys. Handler Thayer, LLP is dedicated to providing distinctive, technologically-current and responsive services to affluent families, privately held businesses and family offices. The firm's practice is concentrated in Corporate, Real Estate and Securities Law, Sports & Entertainment Law, Federal, State and International Taxation, Trusts & Estates, and Financial & Estate Planning. Firm clientele include foundations, multinational corporations, professional athletes, prominent entrepreneurs, celebrities, and family offices.

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