By Melvin A. Warshaw

# ILITs and the GST Tax: How Do We Fund Premiums in 2010?

For some insureds, legislative uncertainty doesn't require much of an adjustment to funding of their irrevocable life insurance trusts; for others, it's time to consider alternatives

The estate and generation-skipping transfer (GST) tax will reappear in 2011. For some insureds and the trustees of their irrevocable life insurance trusts (ILITs), the reinstatement of the estate and GST tax laws in 2011 should have little impact on how their ILITs are funded in 2010. But for other insureds and their ILIT trustees—particularly those in which an insured's intent is to preserve the fully GST exempt status of his ILIT when the GST tax law reappears in 2011, funding in 2010 will present some unique challenges. Until there's clarification of how the GST tax law will be applied in 2010, there are several alternatives an insured can consider for funding his premiums, including making a loan to an exempt ILIT. Let's look at the development of the GST tax and explore potential premium funding strategies for 2010.

## Pre-2010

The GST tax applies to direct and indirect transfers made during the life, or as a result of the death, of a "transferor" that are made to a person who is two or more generations younger than the transferor (also called a "skip person"). For example, if a grandparent makes a transfer to a trust for the benefit of his grandchildren and the trust excludes children as beneficiaries, the grandparent will have made a transfer that is a "direct skip."

The GST tax also applies to "indirect skips" known as "taxable terminations" and "taxable distributions." A taxable termination occurs, for example, at the death of the last child in the group of a trust created by the children's parent (that is, the parent is the transferor) and the remaining principal is distributed to the transferor's grandchildren. If the trust allowed the trustee to make payments to a grandchild before the last child died, those payments would be taxable distributions.

Each taxpayer has a GST tax exemption amount that may be allocated during life or at death and is often used to minimize eventual GST tax on transfer to or distributions from a trust. The 2001 Economic Growth and Tax Relief Reconciliation Act (EGTRRA) made numerous amendments and changes to the GST tax law, but only for the period between 2001 and 2010. (See "GST Rates and Exemptions," p. x. for the applicable GST tax rates and exemption amounts for 2009, 2010 and 2011.)

Before enactment of EGTRRA, if a taxpayer wished to allocate GST exemption to an indirect skip transfer, the taxpayer had to make an affirmative allocation on a gift tax return filed for the year in which he made the transfer. Before EGTRRA, tax return preparers sometimes failed to allocate their client's GST tax exemption amount to indirect skips and, as a result, trusts were unnecessarily exposed to GST tax.

## EGTRRA's Effects

In passing EGTRRA, Congress provided for automatic allocation of the GST tax exemption amount to indirect skip transfers to trusts that don't result in an immediate GST tax, but might incur GST tax later (for example, on taxable terminations or taxable distributions).[1] Automatic allocation of GST tax exemption to indirect skip persons cured the problem of tax return preparers inadvertently failing to allocate GST tax exemption for transfers made to trusts that were designed to be GST-exempt trusts. Under the indirect skip transfer rules of EGTRRA, even if a donor's tax return preparer fails to file a

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gift tax return, the donor's GST tax exemption is automatically applied to transfers made to many types of intergenerational trusts.

Following EGTRRA, the Treasury regulations[2] created a new category of so-called "GST trusts" to which automatic allocation of GST tax exemption applies for indirect skip transfers. The regulations broadly define a "GST trust" and the term could apply to virtually any trust created for the benefit of family members unless the trust falls into a narrow group of exceptions. The exceptions were designed to ensure that GST tax exemption won't be allocated automatically if it's unlikely that a person who is two or more generations younger than the transferor or a non-skip person (for example, a charitable trust) will receive assets from the trust.

To avoid an inadvertent automatic allocation of GST tax exemption to an ILIT, a transferor must elect out of automatic allocation on a timely filed gift tax return.

The broad reach of the automatic allocation rules can cause inadvertent allocation of GST tax exemption to some trusts that may result in a wasting of a transferor's GST tax exemption. In a typical ILIT funded with single life policies designed to provide income replacement for the family of the insured, the primary beneficiary is often the insured's spouse. Upon the spouse's death, any remaining trust assets are typically paid to the children, either outright or held in further trust. A successful ILIT will exclude the policy death benefit from estate tax and presumably from GST tax as well. But under the automatic allocation rules, GST tax exemption will be automatically allocated to this ILIT even though the trust assets may never pass to the insured's grandchildren.

In many ILIT situations the insured wouldn't want GST tax exemption automatically allocated to the trust. To avoid an inadvertent automatic allocation of GST tax exemption to an ILIT, a transferor (or more likely his return preparer) must elect out of automatic allocation on a timely filed gift tax return for the year in which a transfer to the trust is made.[3]

## GST Rates and Exemptions

*What they are—and potentially will be*

| Calendar year | Applicable rate | GST tax exemption amount |
|---|---|---|
| 2009 | 45% | $3,500,000 |
| 2010 | 0% (GST tax does not apply) | None (GST tax does not apply)* |
| 2011 | 55% | $1,340,000? ($1,060,000 exemption amount in 2001, plus an inflation adjustment since 2001) |

*The generation skipping transfer (GST) tax doesn't apply to GSTs that occur in 2010.The GST tax continues to apply to transfers in 2010 that are not themselves GSTs. For example, a 2010 gift to a trust for children and grandchildren still creates an inclusion ratio for GST tax purposes.

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## GST Exemption Allocation

If the allocation of GST exemption is made by the date the gift tax return is due (including extensions), the value of the transfer for GST allocation purposes will be the same value as used for gift tax purposes, which is the value on the date of the gift.[4] For an ILIT, the value would be the amount of the annual premiums (or perhaps a lesser amount under the economic benefit or loan regimes permitted under the split-dollar and split-dollar loan regulations).

In a typical ILIT with multiple beneficiaries, the donor-insured generally must allocate GST tax exemption to the trust to make it GST tax exempt. The GST tax annual exclusion doesn't apply to direct skip transfers in trust for an individual unless 1) the trust provides that distributions can't be made to anyone other than a single skip person beneficiary during that person's life, and 2) if the skip person dies before the trust terminates, the trust assets must be included in that person's estate[5] At the time an intergenerational trust is created, a donor-insured is often unwilling to commit the resources needed to provide a set amount of liquidity to each grandchild and more remote descendants.

In those situations in which an insured wishes to eliminate GST tax considerations after the death benefit is paid to the ILIT, a donor-insured may rely on the combination of the gift tax annual exclusion for gift tax purposes and allocation of GST tax exemption for GST tax purposes. In simple premium funding programs, the amount transferred annually to the ILIT is the amount of the annual premium. In more sophisticated premium funding programs that rely on a split-dollar plan or premium loans, the amount of each transfer to the ILIT may be either the annual term insurance cost of providing life insurance death benefit coverage to the ILIT (in employer or private-split dollar plans) or the annual loan interest due on premium advances that may be treated as applicable federal rate (AFR) loans to the ILIT (in loan regime programs). (For an extensive discussion of split-dollar plans, see Lawrence Brody and Richard L. Harris, "Private Split-dollar Arrangements," in the May 2010 issue of *Trusts & Estates*, p. 42.)

## Dynasty and Descendants Trusts

In situations in which a dynasty trust (that is, a trust in which assets are passed down to a grantor's grandchildren and younger generations, and the grantor's children are not included as beneficiaries) is involved in the life insurance planning, allocation of GST exemption may be automatic because the ILIT itself is a skip person. If all of the beneficiaries of the ILIT are skip persons—because they are two or more generations below the donor—the trust itself will be considered a skip person.[6] Wealthy donors who have already adequately provided for their children may feel it's not necessary to give their children a beneficial interest in the trust or any powers of withdrawal over trust property with respect to contributions to a trust earmarked for grandchildren and more remote descendants.

There are other situations in which a donor-insured may wish to hedge his bets by naming children as well as grandchildren as permissible trust beneficiaries. Often this is known as a descendants trust, and in these situations, the ILIT itself isn't a skip person. Under the automatic allocation rules for indirect skip transfers and the broad definition of a GST trust in the regulations, generally a transfer to a fully discretionary trust for descendants will be an indirect skip and GST tax exemption will be automatically allocated. A gift tax return need not be filed. However, it may still be desirable to file a gift tax return for recordkeeping and to begin the running of the statute of limitations on the value of the gift and the zero inclusion ratio for GST tax purposes.[7]

## 2010 GST Dilemma

The GST tax exemption is tied to the estate tax applicable exclusion amount.[8] The applicable exclusion amount is zero in 2010 because the estate tax has been repealed.[9] Therefore, the GST exemption in 2010 is zero.

If Congress continues to do nothing, the GST tax will reappear on Jan.1, 2011, with a top rate of 55 percent. If Congress fails to act in 2010, the GST tax exemption amount will reappear in 2011 at about $1,340,000 ($1,060,000 GST tax exemption amount for 2001, plus an inflation adjustment).

And what about the application of GST tax to preexisting ILITs for transfers made to a trust in 2011? There's a mandate in EGTRRA Section 901(b) that states that after 2010, the tax code "shall be applied and administered to transfers…as if the provisions described [in EGTRRA] had never been enacted."[10] Unfortunately, this mandate raises far more questions than answers as to how to interpret the GST tax law for 2011.

Donors have the same reasons in 2010 to make transfers to existing GST-exempt trusts as before, including allowing the trustee to pay recurring obligations such as life insurance premiums in the case of an ILIT. But there's no GST exemption to allocate in 2010. It's possible, however, to make a late allocation of GST exemption for 2010 after April 15, 2011.

If, between the years 2001 and 2009, the insured had created and funded an ILIT for descendants to which the automatic allocation rules of EGTRRA applied, will this ILIT be exempt from GST tax after 2010, when Internal Revenue Code Section 2632(a) (enacted in EGTRRA) will be treated as if it "had never been enacted"?

If, between the years 2004 and 2009, the insured had created and funded an ILIT and the insured has allocated GST tax exemption to the trust in excess of the $1 million exemption amount (indexed for inflation from 1999) that would have been applicable if the increases in the GST tax exemption in EGTRRA "had never been enacted," will the GST tax exemption be under-allocated so that the trust's inclusion ratio after 2010 will be greater than zero?

At this point, we can only hope that Congress will adopt understandable solutions that maintain the greatest possible continuity between the former (pre-2010) GST tax law and the reinstated (post-2010) GST tax law and also provide some consistency for transfers made in 2010.

Since Jan. 1, 2010, trustees of ILITs previously not subject to GST tax (such as dynasty trusts and perhaps trusts for descendants) have faced the dilemma of how to fund premiums due in 2010 on policies purchased in prior years. While it continues to be possible to make gifts to ILITs in 2010 that qualify for the gift tax annual exclusion, since the GST tax exemption in 2010 is zero, it's not currently possible to allocate GST tax exemption to transfers made in 2010 to exempt ILITs.

It's currently unclear whether and how GST tax exemption can be allocated in 2010 for a 2010 transfer. We don't know today how the automatic allocation rules for direct and indirect skip transfers made in 2010 will be applied. In 2011, depending on how the "had never been enacted" rule is applied, there may be a GST tax exemption amount equal to about $1,340,000 available in 2011 to allocate on a late filed gift tax return.

## Risks of Late GST Allocation

When the GST tax system reappears in 2011, a late allocation of GST exemption hopefully should be available to apply to transfers made to ILITs in 2010. The first day for making a late allocation of GST exemption for 2010 will be April 16, 2011. Under this option, the donor-insured would make a transfer to his exempt ILIT in 2010 the same as in prior years and then wait until the ability to make a late allocation of GST exemption (previously permitted under IRC Section 2642(g)) is restored in 2011. But the insured assumes at least four risks under this option.

First, there will be no GST tax exemption in 2010, unless Congress acts to restore the GST tax for 2010.

Second, the regulations provide that for a late-filed allocation on a gift tax return, the amount of GST tax exemption required to be allocated to protect the entire trust from GST tax generally equals the value of the policy or the ILIT assets at the time of the late allocation.[11]

If the insured is alive, he can make a late allocation of GST tax exemption using the value (FMV) of the policy or ILIT assets as of the first day of the calendar month in which the late allocation is filed with the Internal Revenue Service (less the value of the trust assets at the time the trust last had a zero inclusion ratio, which would be the day before the 2010 gift).[12] A late allocation of GST tax exemption is effective on the date the gift tax return is filed with the IRS and once made, is irrevocable. The gift tax return's postmark date will be deemed the filing date for the late allocation of GST tax exemption.[13] The FMV of a portfolio of no lapse guarantee policies for example, will typically far exceed the cash value on such policies. If a split-dollar plan (typically an arrangement either between an employee and employer or donor and ILIT to purchase permanent life insurance and split the premiums, death benefits or cash value) or loan program was put in place before 2010, the difference in the amount of the GST measure of the gift for transfers made in 2009 and 2011 and a late allocation filed in 2011 made for a 2010 transfer could be very significant.

The GST regulations provide no specific guidance on how a life insurance policy should be valued for purposes of a late allocation of GST tax exemption. Presumably, the FMV for GST purposes will be the same as would apply for gift tax purposes if a gift of the policy were made at that time.

The safest way to determine the FMV of a policy for gift tax purposes is to request the carrier issue a Form 712 providing the interpolated terminal reserve value (ITR) of the policy. For no lapse guarantee policies, the ITR of a policy can sometimes be slightly less than the total premiums paid and is often far in excess of the policy cash value. The carrier is required to send a copy of Form 712 to the IRS.

Insureds and ILIT trustees may be uncomfortable requesting a Form 712 from the carrier to support the FMV of each policy held in the ILIT on the date of the late allocation of GST tax exemption. There can be a wide variety of ways in which carriers determine the gift tax value of policies, depending on the method of reserving the carrier uses for the particular policy.[14] Different carriers may use different reserve methods for virtually the same product type.

What if the insured is seriously or terminally ill at the time of the late GST allocation? The FMV of a policy for GST tax exemption purposes may not be ts interpolated terminal reserve value. Instead, the value may be closer to its death benefit amount.

> Carriers can determine the gift tax value of policies in a variety of ways.

Third, EGTRRA added the IRC 2642(g) relief provisions for valuing late GST allocations. This 2001 change in the law permits the IRS, in certain cases, to allow a late allocation to be made on the same terms as a timely allocation (using the date of gift value for GST allocation purposes).[15] Depending on how the "had never been enacted" rule in EGTRRA Section 901(b) is ultimately decided, this special late GST allocation valuation rule wouldn't be effective for 2011 unless Congress ultimately reinstates the various EGTRRA GST reforms originally adopted in 2001. In the past, the IRS has been very generous in granting IRC Section 9100 administrative relief for late allocations of GST exemption. If Congress fails to reinstate the EGTRRA GST tax reforms for 2011, will the IRS allow liberal administrative relief under IRC Section 9100 for late allocations of GST tax exemption?

Fourth, the special GST election available to value a transfer as of the first day of the month in which a late allocation is made, isn't available for transfers to a trust holding a life insurance policy if the insured has died before the allocation is made[16] If the insured has died, the FMV of the transfer for purposes of allocating the GST tax exemption will be the amount of the policy death benefit.

As noted, for 2010, a late allocation of GST tax exemption can't be made until April 16, 2011. If the insured under a single life policy dies before then, the value of the transfer for GST tax purposes will be the death benefit amount. There should be less concern with a second-to-die policy, since both insureds would have to die before April 16, 2011.

One viable strategy: have the insured make a three-year term loan to the ILIT for the amount of the 2010 premiums due.

## Skip the Premium Payment

Older, non-guaranteed policies (such as whole life, variable, universal, but not no lapse secondary guarantee)[17] with significant cash value accounts may continue to perform about as projected even if the 2010 premium is paid from existing cash value. It's unlikely that a no lapse secondary guarantee policy, with fairly inflexible premium due dates and minimal cash value, can be sustained if a premium due in 2010 isn't paid on time.

## "Mirror" Trust

Some commentators[18] suggest not wasting the insured's 2010 gift tax annual exclusion amounts. Instead, they've posited that an insured might make gifts in a way that, once there's certainty with the GST tax law, the 2010 gifts can be added to the original exempt ILIT. Under this approach, an insured would form a new special 2010 ILIT, the beneficiary of which would be the existing exempt ILIT. The terms of this new trust would, in effect, mirror the existing trust. The insured would make annual exclusion gifts to the special 2010 ILIT. To pay 2010 premiums, the insured would also lend money to the existing exempt ILIT that enables its trustee to pay the premiums that are due in 2010. When the current legislative uncertainty is resolved, if there's available GST tax exemption for 2010, the trustee of the special 2010 ILIT can contribute its assets to the existing exempt ILIT. Presumably, GST tax exemption could be allocated when the 2010 gift proceeds are transferred from the special 2010 ILIT to the existing exempt ILIT. Thereafter, the existing ILIT could repay the lender along with any interest due.

This technique appears to be theoretically correct but there are at least four practical considerations that may make it awkward and expensive to implement.

First, for an insured previously advancing say $250,000 annually to enable an existing exempt ILIT to pay annual premiums, he may be unwilling to come up with $500,000 in 2010 (that is, the $250,000 to pay the premiums due in 2010 and the $250,000 to fund the special 2010 trust to avoid wasting the 2010 gift tax annual exclusion amounts).

Second, it may be unrealistic to assume that in prior years, wealthy and presumably sophisticated donors advancing annual premiums to exempt ILITs in excess of $250,000 annually have been relying on an expanded use of their gift tax annual exclusion amounts ($13,000 per beneficiary in 2010, $26,000 if the gift is split with the donor's spouse). Savvy donors faced with large annual premiums due by their ILIT may have previously adopted a private split-dollar plan or private premium loan program to finance significant recurring premiums so as to leverage gifts to the ILIT. A split-dollar plan or premium loan program generally permits a donor-insured to make other use of his gift tax annual exclusion amounts in a way that provides a more immediate benefit to family members, while maximizing the transfer tax leverage in the funding of their ILIT.

Third, some donors may only have a limited number of available trust beneficiaries that will not cover the entire annual premium.

Fourth, clients may be unwilling to incur the legal costs of having their lawyer establish a special trust that may last for only one year.

## Premium Loans

Currently, it's unclear how the GST tax exemption can, or will be allocated to 2010 transfers. Advisors worry that an ILIT that was originally intended to be wholly exempt from GST tax may only be partially exempt, unless a late allocation of GST tax exemption is made in 2011 on a late filed gift tax return. A dynasty trust or trust for descendants may hold assets (like life insurance policies) to which no GST tax exemption will have been allocated for 2010.

It's increasingly unlikely that Congressional action will be retroactive to Jan. 1, 2010[19] (and even if it's retroactive, it may not survive a constitutional challenge). If Congressional action were retroactive or if Treasury were to provide liberal relief for 2010, it's possible GST tax exemption allocations may be made or may be automatic as though the current gap in the GST tax system never occurred.

Due to this uncertainty, one way to fund 2010 premiums is for an exempt ILIT trustee to borrow the premiums due from the donor-insured (or a related party) as premium loans. Care should be taken to charge an interest rate at least equal to the AFR for the month in which the premium advance is made. All other provisions of the split-dollar loan regulations should be followed. Using private loans from the insured to his ILIT in 2010 (in lieu of gifts of the entire premium amount) may require the advisor to reassess whether and how to maximize the use of the insured's gift tax annual exclusion amounts for 2010.

Assuming there are no prior loans outstanding of the donor-insured to the ILIT, a viable strategy might be to have the insured make a three-year term loan to the ILIT for the amount of the 2010 premiums due. For three-year term loans made in October 2010, the short-term AFR rate on such loans could be set at 0.41 percent, payable annually. The first payment of loan interest would occur in October 2011. The loan(s) should be reflected by written promissory note(s) (one for each premium advance). If no legislation occurs in 2010, the insured can resume making gifts to the ILIT in 2011 to pay off the loan. Use of loans to an ILIT tied to the prevailing AFR rate to cover premiums due in 2010 eliminates concerns about the ILIT's fully exempt status for GST tax purposes in 2011 and later years. In the unlikely event that Congress reinstates the GST tax system retroactively and assuming no prior outstanding loans of the ILIT due to the insured, the ILIT trustee could presumably pay off any 2010 loans later in 2010, along with any pro rated amount of interest due.

## Contributory Split-dollar

A "contributory" split-dollar arrangement is one in which the party treated as the non-owner under the final split-dollar regulations (such as the ILIT in a private split-dollar plan) pays a portion of the premium equal to the economic benefit cost. The deemed owner (that is the donor-insured in a private split-dollar plan) pays the remaining portion of the premium payment. Under the regulations, this arrangement can be taxed under the economic benefit regime so long as the only economic benefit conferred on the owner (that is, the donor-insured) is current life insurance protection, but the donor-insured mustn't have access to cash value.[20] (In other words, collateral assignment split dollar is still possible as long as it's a non-equity design). Although the amount paid by the non-owner is taxable income to the owner (that is, the donor in private split dollar), if the ILIT is a grantor trust there's no income tax consequence.

In past years, under a contributory split-dollar arrangement, insureds would make a cash gift to the ILIT of the annual economic benefit amount, which gift might then qualify for the gift tax annual exclusion and to which GST tax exemption could be allocated. Due to the uncertainty over how the automatic allocation rules will be applied in 2010 and concern that an ILIT may not continue to have a zero inclusion ratio when the GST tax returns in 2011, perhaps another approach is appropriate for 2010.

For 2010, in lieu of the donor-insured making a cash gift of the economic benefit amount to the ILIT under a contributory split-dollar plan, the donor-insured might lend that amount to the ILIT. The first interest payment of the ILIT due the donor-insured on this loan would not occur until 2011. When the GST tax returns in January 2011, the donor-insured could make a transfer to his exempt ILIT that qualifies for the gift tax annual exclusion and to which GST tax exemption could be allocated. Later in 2011, the ILIT would have sufficient cash to pay the loan interest.

For insureds who previously entered into a contributory split-dollar plan, not paying premiums in 2010 will not prevent tax consequences from arising in 2010 with respect to such previously adopted split-dollar plan. Or what about a split-dollar arrangement in place before 2010 but no premiums are due this year? The concern here is that there would be a deemed gift (constructive addition) to the ILIT in 2010, unless Congress or the Treasury later provides some relief. Rather than do nothing, the donor would be well-advised to lend the 2010 economic benefit amount to the ILIT to avoid a deemed gift (constructive addition) in 2010 to an otherwise exempt ILIT.

For 2011, the donor-insured presumably would revert to making cash gifts to the exempt ILIT equal to the economic benefit under the contributory split-dollar plan.

The advantage of this approach is that it should require little additional cash. The *de minimis* economic benefit amount loaned to the ILIT in 2010 should have little effect on the donor-insured who wishes to maximize his long-term annual gift tax exclusion program.

## Prior Premium Loans

For insureds who previously advanced premiums to an exempt ILIT relying on the split-dollar loan regulations, there is a similar concern over a deemed gift (constructive addition) in 2010 to an otherwise exempt ILIT. The insured and ILIT trustee could accrue the loan interest due in 2010 on such prior split-dollar loans, thereby increasing the outstanding loan balances by the amount of loan interest capitalized to loan principal.

## Bottom Line

Use of loans made to an exempt ILIT to pay premiums in 2010 may be the most viable alternative until there's clarification of how the GST tax law will be applied in 2010. Loans would appear to offer greater certainty than relying on a late allocation of GST tax exemption and may be simpler and less cumbersome than establishing a special trust just for 2010. But for sophisticated insureds already involved with a split-dollar arrangement, the current uncertainty with the GST tax law for 2010 may only require a minor adjustment in funding his exempt ILIT for 2010.

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## Endnotes

1. Internal Revenue Code Section 2632(c).
2. Treasury Regulations Section 26.2632-1(b)(2).
3. *See* Proskauer Rose Client Alert, "New Generation Skipping Tax Rules Require Taxpayers to File Gift Tax Returns to Elect Out of Automatic Allocation of Exemption," March 2002; Thomas W. Abendroth, Schiff Hardin LLP "Ticking Time Bomb in Irrevocable Life Insurance Trusts, March 2008, at p. 4.
4. IRC Section 2642(b)(1).
5. IRC Section 2642(c).
6. Treas. Regs. Section 26.2612-1(d)(2)(i).
7. IRC Section 6501(a).
8. IRC Section 2631(c).
9. IRC Section 2010(c).
10. Economic Growth and Tax Relieve Reconciliation Act (EGTRRA) Section 901.
11. Treas. Regs. Section 26.2642-2(a)(2).
12. Treas. Regs. Section 26.2642-2(a); Treas. Regs. Section 26.2642-4(b), Example 2.
13. Treas. Regs. Section 26.2632-1(b)(4)(ii).
14. Steve Leimberg and Keith Buck "Life Insurance Valuation—What Practitioners Need to Know," 37 *Estate Plan* 17 (May 2010).
15. If an extension of time is granted to make a late allocation of generation-skipping transfer (GST) allocation, such allocation will not be considered a late allocation under Treas. Regs. Section 26.2642-2(a)(2) but rather a timely allocation under Treas. Regs. Section 26.2642-2(a)(1) and, therefore, the applicable fraction and inclusion ratio will be determined as of the date of transfer and not the date the allocation is actually made.
16. Treas. Regs. Section 26.2642-2(a)(2).
17. No lapse guarantee life insurance policies have a defined premium level at which the life insurance carrier guarantees that the policy will remain in force, even if the cash value should dip below zero and the policy would otherwise lapse.
18. Steve Akers, "Estate Planning Current Developments and Hot Topics" May 2010, at p. 17; AALU Bulletin No. 10-63, "Planning for Transfers to GST-Exempt Life Insurance Trusts During 2010," referencing presentations made at the 44th Annual Heckerling Institute on Estate Planning in January 2010, at p. 2.
19. On July 27, 2010, Senate Finance Committee Chairman Max Baucus told BNA that it's increasingly unlikely that the estate tax and GST transfer tax will be reinstated retroactively to the start of 2010.
20. Treas. Regs. Section 1.61-22(c)(1)(ii).