

FEBRUARY 4, 2013

American Taxpayer Relief Act Provisions

Acting in last minute fashion, Congress addressed expiring tax provisions with the American Taxpayer Relief Act of 2012 (“ATRA”).

The good news (besides avoiding the “fiscal cliff”) is that, unlike previous tax legislation passed in 2001 and 2010, ATRA provisions are permanent under the terms of the law which was signed by the President. While under ATRA, estate, gift and GST tax rates have increased compared to 2012 rates, they are still lower than the rate increases that would have become effective had Congress not taken action. Key provisions of ATRA also enacted income tax rate increases and other revenue-generated measures.

ESTATE, GIFT AND GST TAX PROVISIONS

The following are the important estate, gift and GST provisions brought about by ATRA:

Federal Estate Tax Rates. ATRA provides for a maximum federal estate tax rate of 40 percent. This is a slight increase from the 35 percent rate in effect for 2011 and 2012. However, it is slightly lower than the pre-2010 55 percent maximum rate that was scheduled to be reactivated.

Exclusion and Gift Tax Exemption Amount Remains \$5 Million. The exclusion amount (the combined amount an individual can transfer during life and upon death without incurring federal gift or estate tax) is now set at \$5.25 million (adjusted annually for inflation). This means a person can continue to make gifts, or transfer property to someone other than a spouse at death, of up to total of \$5.25 million (adjusted

annually for inflation) without incurring gift or estate tax. There continues to be an unlimited marital deduction for married couples who are U.S. persons.

Portability. With a \$5.25 million per person lifetime exclusion amount, a married couple can transfer a combined amount of \$10.5 million (as adjusted for inflation) to their children, or anyone else, without incurring a federal gift or estate tax. Portability allows a surviving spouse to utilize his or her deceased spouse’s unused exclusion amount. Under 2010 legislation, portability only applied to decedents dying after December 31, 2010 and before January 1, 2013. ATRA makes this provision permanent. In order to take advantage of portability, a federal estate tax return must be filed for the first deceased spouse’s estate (even if it is valued at less than \$5.25 million and otherwise not required to file a federal estate tax return). A surviving spouse can utilize this unused exclusion amount during his or her life or at death.

GST Exemption. The GST tax is a separate tax imposed on transfers by individuals to grandchildren and others (including certain trusts) treated as being two or more generations younger than the transferor. The GST exclusion (the amount that can be transferred without incurring the GST tax) also continues to be \$5.25 million (adjusted annually for inflation).

State Death Tax Deduction. There is still a full deduction for all state estate taxes when calculating a decedent’s federal estate tax. While

TAXATION AND TRUSTS & ESTATES ALERT

most states do not have state death taxes, this provision is particularly important in New York and New Jersey, both of which imposed taxes upon the transfer of a decedent's estate.

INCOME TAX PROVISIONS

Individual Income Tax Rates. The marginal individual income tax rates introduced by the 2001 legislation are made permanent. However, a new top marginal income tax rate of 39.6 percent will be imposed on taxpayers with taxable income over \$450,000 for married taxpayers filing jointly (\$225,000 for married taxpayers filing separately), \$425,000 for taxpayers filing as heads of household and \$400,000 for single taxpayers. The new 39.6 percent rate will be imposed for all taxable income above those income levels. The taxable income amounts will be indexed for inflation.

Capital Gains and Dividends. The highest rate for capital gains increases from 15 percent to 20 percent. The 20 percent rate will only apply to high-income taxpayers who are taxed at the new 39.6% marginal income tax rate (taxpayers with taxable income over \$450,000 for married taxpayers filing jointly [\$225,000 for married taxpayers filing separately], \$425,000 for heads of household and \$400,000 for single taxpayers). All taxpayers who are in the middle income tax

brackets will continue to be taxed on capital gains at 15 percent. The zero percent rate is retained for taxpayers who are in or below the 15 percent income tax bracket. Qualified dividends will continue to be taxed at capital gains rates.

Alternative Minimum Tax Relief. The AMT exemption amounts for individuals were increased for tax years beginning in 2012. In addition, for tax years beginning after 2012, the dollar amounts in calculating the AMT will be indexed for inflation. Relief from AMT for nonrefundable credits is retained.

Phase-out of Personal Exemptions and Itemized Deductions. The personal exemptions and itemized deductions phase-out rules are reinstated at higher applicable amounts of \$300,000 for married taxpayers filing jointly and surviving spouses (\$150,000 for married taxpayers filing separately), \$275,000 for heads of household and \$250,000 for single taxpayers.

The new law represents changes on several fronts. Particularly in the estate and gift planning areas, the opportunities and incentives for planning remain. The "permanent" \$5.25 million exclusion amount allows individuals to leverage effective planning techniques while the slight increase in rates means that a carefully considered estate plan can produce substantial tax benefits.

For more information about any of the topics covered in this issue of the Taxation and Trusts & Estates Alert, please contact:

*Jordan S. Weitberg, Esq.
jweitberg@bressler.com
973-660-4453*

*Paul I. Rosenberg, Esq.
prosenberg@bressler.com
973-966-9684*

*Ronnie Ann Powell, Esq.
rpowell@bressler.com
973-245-0682*

*Danielle R. Greene, Esq.
dgreene@bressler.com
973-660-4474*

*Glenn J. Christofides, Esq.
gchristofides@bressler.com
973-660-4471*

*Stacey Valentine Fielding, Esq.
sfielding@bressler.com
973-660-4472*

The information contained in this Client Alert is for general informational purposes only and is neither presented nor intended to constitute legal advice or a legal opinion as to any particular matter. The reader should not act on the basis of any information contained herein without consulting first with his or her legal or other professional advisor with respect to the advisability of any specific course of action and the applicable law.

The views presented herein reflect the views of the individual author(s). They do not necessarily reflect the views of Bressler, Amery & Ross, P.C. or any of its other attorneys or clients.

©2013 Bressler, Amery & Ross, P.C.
All rights reserved.

ATTORNEY ADVERTISING

17 State Street
New York, NY 10004
212.425.9300

325 Columbia Turnpike
Florham Park, NJ 07932
973.514.1200

200 East Las Olas Blvd.
Fort Lauderdale, FL 33301
954.499.7979

www.bressler.com