

What Does The New Tax Act Mean For You And Your Estate Plan?

As has become customary over the last several years, Congress acted at the very last minute to avert the “Fiscal Cliff” by passing the American Taxpayer Relief Act of 2012 (“ATRA”). ATRA was signed into law on January 2, 2013, providing much needed certainty regarding federal estate, gift, Generation-Skipping Transfer (“GST”) and individual income taxes. However, not all fiscal cliff issues were resolved with ATRA, leaving clients and practitioners wondering what the future holds as sequestration, other spending cuts, the looming debt ceiling, and additional revenue raising measures are scheduled to be addressed in the months ahead.

After a decade of legislation with staggered and expiring provisions, and all the uncertainty that caused, ATRA made the federal estate, gift and GST tax exemptions in place last year permanent. This is terrific news, as individuals still have a \$5 million federal estate, gift and GST tax exemption, indexed for inflation (\$5,250,000 in 2013). However, the top tax rate for these taxes increased from 35% to 40%. Fortunately, the portability provisions that were instituted at the end of 2010 were also made permanent by ATRA. These provisions give a surviving spouse the opportunity to use the deceased spouse’s unused estate tax exemption for his or her own gift and estate tax minimization planning.

While ATRA made many favorable tax provisions “permanent,” thereby providing planning certainty to practitioners and clients alike, we must remind ourselves that these provisions are only “permanent” until the next time Congress decides to change the tax law. As the discussions regarding sequestration come to a head, Congress will no doubt be looking for additional ways to raise revenue.

For example, there are “hot button” estate planning issues that ATRA did not address, such as abolishing valuation discounts for intra-family transfers of closely-held businesses, requiring a minimum ten year term for Grantor Retained Annuity Trusts (GRATs), and eliminating some or all of the estate planning benefits of the grantor trust rules. The conspicuous absence of these revenue-raising items from ATRA creates speculation that they will be addressed in future legislation. Therefore, if you did not use some or all of your increased gift tax exemption during the last two years, now is the right time to most effectively take advantage of this planning opportunity.

Finally, although tax planning is very important, most estate and gift planning is precipitated by financial and personal/business succession planning concerns. For example, planning for liquidity needs to address estate tax payments, to pay off mortgages, and to fund buy-sell agreements are typical non-tax concerns that are addressed in the estate planning process. This favorable new tax law allows your RIW attorneys to work with you and your other advisors to effectively address all of these planning goals in an integrated fashion.

Addressing your estate planning issues now will allow you to achieve peace of mind, knowing that you have created a thoughtful legacy for your heirs to enjoy.