

## Current Developments Update April, 2013

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On April 10, 2013, the White House budget was released proposing a number of high-net-worth estate planning crackdowns. While these proposals signal areas where the Administration is targeting reform, they may also be proposed solely as bargaining chips in future legislative negotiations.

### Estate and Gift Tax Reform

Despite the current estate and gift tax exemptions being considered permanent when enacted on January 1, 2013, the Administration has proposed changes to be effective in 2018. The proposal, if agreed to by Congress, would return estate and gift tax rates and exemptions to those of 2009. The current \$5 million exemption for estate, gift and GST taxes which is indexed for inflation, would return to the \$3.5 million level for estate and GST taxes in 2018, and the gift tax exemption would be decoupled at \$1 million. Additionally, the White House budget proposes to increase the top transfer tax rate from 40% to 45%.

### Restrictions on GRATs

The Administration is proposing a 10 year minimum term for Grantor Retained Annuity Trusts (GRATs). Additionally the value of the remainder of the GRAT at creation must be greater than zero.

### Maximum Duration of the GST Exemption

When the Generation-Skipping Transfer (GST) Tax was enacted in the 1986, all states had a Rule Against Perpetuities preventing the creation of perpetual trusts. Thus a trust which was GST exempt could only be exempt until the state law governing the trust required it to vest in its beneficiaries. In the past 15 years, many states have abolished their Rule Against Perpetuities, the result being that trusts which are GST exempt could escape transfer tax in perpetuity. The Administration is proposing a 90 year duration on the GST exemption.

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### **Inherited IRAs**

The White House budget proposes eliminating the inherited IRA rollover for non-spouses so that non-spouses inheriting an IRA would be required to liquidate the IRA within 5 years of death rather than stretch it over life expectancy.

### **Retirement Plan Cap**

The Administration is proposing a \$3 million cap on tax-preferred accounts including IRAs, Roth IRAs and 401(k)s. This cap is intended to limit an individual's total balance across tax-preferred accounts to an amount sufficient to finance an annuity of \$205,000 per year in retirement. While this proposal would not force money out of a plan, it would prevent additional contributions once the cap is reached. This cap is perceived to impose on defined contribution plans limits similar to those already in existence for defined benefit (pension) plans.

### **Itemized Deductions Cap**

The White House budget proposes a cap on the value of itemized deductions at a maximum rate of 28%, even for individuals who would otherwise claim deductions against a higher tax bracket.

### **Fair Share Tax**

The Administration has also proposed a version of the Buffet Rule, or Fair Share Tax ("FST"), that would require millionaires to pay no less than 30% of income in taxes. The FST would function a surtax, similar to the current AMT.

**What Does this Mean for You?**

Nearly all of these proposals have been made by the White House in the past in some form, which highlights that they are merely proposals. Therefore there is no planning that must be done directly in response. However, as always you should continue to stay in contact with your tax advisors on a regular basis to ensure that when legislation is passed that could affect you, you can be proactive in your planning.