

## The ATRA Tax Law Changes January 1, 2013

The American Taxpayer Relief Act of 2012 (ATRA) was passed on January 1, 2013 in order to address the sunset of certain favorable federal estate, gift and generation-skipping transfer (GST) tax exemptions.

Tax	Sunset Exemption & Max Rate		ATRA Exemption & Max Rate	
Gift	\$1,000,000	55%	\$5,000,000	40%
GST	\$1,360,000	55%	\$5,000,000	40%
Estate	\$1,000,000	55%	\$5,000,000	40%
	No portability for surviving spouse		Portability for surviving spouse	

The new \$5,000,000 exemptions for Estate, Gift and GST tax under ATRA are indexed for inflation. For 2013, the exemptions are \$5,250,000. Furthermore ATRA did not include a sunset on these new exemptions – effectively making the new exemptions permanent without affirmative action by Congress. ATRA also retained portability which was introduced to the transfer tax system in 2011. Portability allows a surviving spouse to make use of the decedent spouse's unused exemption. However, to make use of this exemption, an estate tax return for the decedent spouse will be necessary to file. The IRS intends to release a Form 706-EZ for this purpose.

While ATRA made favorable transfer tax changes, ATRA also raises ordinary income and capital gains tax rates for "high income taxpayers" (HITs). Individuals with income over \$400,000 or \$500,000 for couples are considered HITs. Trusts with income over \$12,000 are considered HITs. The ordinary income tax rate for HITs is now 39.6% and the capital gains tax rate for HITs is now 20%.

Additionally, ATRA introduced a surtax on unearned income over certain limits:

3% Surtax on Unearned Income Over:	
Individuals	\$150,000
Couples	\$250,000
Trusts	\$12,000

Because the surtax affects trusts as such a low rate, Trustees may wish to consider distributions to beneficiaries who are not HITs and/or not subject to surtax, in order to reduce the effect of the HIT income tax rate and the surtax.

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What do the ATRA tax law changes this mean to you?

1. Due to the increase in income tax rates, if you are acting as Trustee of an irrevocable, nongrantor trust, you should discuss income tax planning with your attorneys and/or income tax advisor.
2. If you are a beneficiary of an irrevocable trust, discuss income tax planning with your Trustees.
3. Also due to the increase in income tax rates, contact your income tax advisor to ensure proper withholdings for 2013.
4. If your spouse passed away in the past nine months, discuss with your attorney filing an estate tax return to preserve any of your spouse's unused estate tax exemption for your own use.
5. If you did not make use of your lifetime gift exemption by the end of 2012, consider making gifts in 2013.
6. If you made use of your \$5,120,000 lifetime gift exemption in 2012, there is an additional \$130,000 of lifetime gift exemption you may wish to utilize in 2013.

Please contact us at your earliest convenience if you wish to discuss how these changes may affect your estate plan.