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Estate Planning Ramifications of the American Taxpayer
Relief Act of 2012

On January 1, 2013, Congress passed the "American Taxpayer Relief Act of 2012" ("the Act"). The Act provides some welcome certainty as to the federal estate, gift, and generation-skipping transfer ("GST") tax exemptions and rates in 2013 and, hopefully, well beyond.

FEDERAL TRANSFER TAX CHANGES
AND HOW THEY AFFECT YOU

- Unified Estate and Gift Tax Exemption of \$5,000,000. The Act provides for an inflation-adjusted estate and gift tax exemption of \$5,000,000. As adjusted, the 2013 exemption will be \$5,250,000 (up from \$5,120,000 in 2012).
- GST Tax Exemption of \$5,000,000. The inflation-adjusted GST tax exemption will also be \$5,250,000 for 2013.
- 40% Estate, Gift and GST Tax Rate. The Act increases the maximum estate, gift and GST tax rate to 40%, up from 35% in 2012.
- "Portability" Extended. The Act permanently extends "portability," which allows a surviving spouse to take advantage of a deceased spouse's unused estate and gift tax exclusion amount during his or her own life and at death.
- *Note: portability does not apply to the GST tax exemption, nor does it apply to any state death tax exemptions. Accordingly, traditional "bypass*

trust" planning will still be needed to take maximum advantage of these exemptions.

- Extension of State Death Tax Deduction. In calculating the federal estate tax, state estate taxes paid will continue to be deductible. For states without an estate tax or where the tax is "coupled" to the state death tax credit, no additional state estate tax will be due.
- Extension of GST Tax Provisions. Various technical provisions of the GST tax, enacted in 2001, are now permanent, including various GST allocation provisions, clarification of valuation rules for the GST tax inclusion ratio, conservation easements and relief for late GST elections and allocations.
- Annual Gift Tax Exclusion Amount. While not a result of the Act, the 2013 annual exclusion amount for gifts has increased to \$14,000 per recipient (\$28,000 for a married couple electing to split gifts).

WHAT YOU CAN EXPECT MOVING
FORWARD

While we are hopeful that, moving forward, the general framework outlined above will remain "permanent," it's important to recognize that Congress can reconsider any of the aforementioned changes at any time, either within a general tax reform bill or during future negotiations. Congress will continue to look for ways to increase

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ABOUT THE PRIVATE
CLIENT SERVICES
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Our experienced and highly skilled Private Client Services attorneys help our varied clients, both national and international, and from wide-ranging businesses and professions, deal successfully with complex issues that impact them and their families.

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Estate Planning Ramifications of the American Taxpayer Relief Act of 2012

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revenue and reduce the deficit. Previous proposals have been put forth which, if enacted into law, would limit the use of some popular estate planning techniques, including the following:

- Possible limitations on opportunities to transfer appreciating property out of an estate using grantor retained annuity trusts (“GRATs”). Proposals have included requiring GRATs to have a minimum term of ten years, which increases the risk of a grantor’s death during the GRAT’s term and the likelihood that the GRAT assets will be includable in the grantor’s estate. The ability to establish a GRAT that results in a taxable gift of only a nominal amount (sometimes called a “zero-ed out GRAT”) may also be eliminated.
- Possible limitations on the duration of so-called “dynasty trusts” to approximately 90 years.
- Possible inclusion of grantor trusts in the grantor’s taxable estate at death. This would, among other things, eliminate the ability to remove the assets from the grantor’s estate by selling them to an “intentionally defective grantor trust” (or “IDGT”). A related proposal would subject any distributions made from a grantor trust during the grantor’s lifetime to gift tax.

Finally, in addition to opportunities for planning presented by the new tax law, we suggest that all our clients consider the following general questions in connection with their estate plans:

- Have there been changes in your family or financial circumstances which might merit an update to your estate plan?
- If you have an insurance trust or other irrevocable trust, are you up to date on your notices of withdrawal rights (also known as “Crummey letters”) and gift tax returns?
- Are your Living Wills and Powers of Attorney up to date? These documents can become “stale” if not updated every few years.

After a decade of ambiguity surrounding federal estate, gift and GST tax, the Act has restored a level of clarity as to the overall transfer tax scheme for 2013 and beyond. We welcome the opportunity to discuss what planning options are available to you in your particular circumstances.