The Administration’s Fiscal Year 2013 Revenue Proposals
*The Changing Estate and Gift Tax Landscape: What You Need to Know*

The Department of the Treasury has released the Obama Administration’s Fiscal Year 2013 Revenue Proposals (the “2013 Proposals”), supporting an amendment to the Balanced Budget and Emergency Deficit Reduction Act of 1985. As expected, they contain proposals for modifying certain income, estate and gift tax provisions. The 2013 Proposals provide insight into the Administration’s position regarding the current estate and gift tax structure, presently set to sunset on December 31, 2012. Significantly, the 2013 Proposals seek to reduce the estate, gift and GST tax exclusions, and increase the maximum estate and GST tax rates.

**Pertinent Provisions**

The 2013 Proposals provide as follows:

- The estate, generation-skipping and gift tax parameters as they existed in 2009 would be made permanent.
  - *Top estate and GST tax rates:* 45% (currently 35%)
  - *Estate tax exclusion:* $3.5 million (currently $5 million)
  - *GST exclusion:* $3.5 million (currently $5 million)
  - *Gift tax exclusion:* $1 million (currently $5 million)

- Portability as enacted would be made permanent.

- The new parameters would be effective for estates of decedents dying and for transfers made after December 31, 2012.

**IDGTs**

The 2013 Proposals also contain drastic new provisions concerning the assets held in Grantor Trusts. The Intentionally Defective Grantor Trust (“IDGT”), a staple of estate planning, allows a grantor to be treated as the owner of trust property for income tax purposes but excludes the trust property from a grantor’s estate for estate tax purposes. The 2013 Proposals are drafted to close what the administration views as a “loophole” between the income and transfer tax rules applicable to these trusts which essentially allow a grantor to be treated as an owner of the trust for income tax purposes but permit the exclusion of the assets from the gross estate of the grantor for estate tax purposes. With regards to IDGTs, the proposed amendment would do the following:

- The assets of the trust would be included in the gross estate for estate tax purposes.
- Distributions from the trust to beneficiaries during the grantor’s life would be subject to gift tax.
- If, during the life of the grantor, the grantor ceased to be treated as the owner of the trust for income tax purposes, any remaining trust assets would be subject to gift tax.

The 2013 Proposals would affect IDGTs created on or after the enactment and apply to any trust to which a contribution is made on or after the date of enactment. If passed, these provisions would radically alter the effectiveness of the IDGT’s estate planning benefits.

**GRATs**

The issue of GRATs (grantor retained annuity trusts) has been debated in Congress for several years. The 2013 Proposals once again require a minimum ten-year term for a GRAT
and also negate the possibility of creating a “zeroed-out” GRAT.

It is evident that, should the proposed changes be enacted, the current estate and gift tax structure will be significantly altered. While, to be sure, the 2013 Proposals are subject to Congressional approval, the Administration’s view of the estate and gift tax parameters is noteworthy. In light of an ever-shifting landscape, this remains an optimal time to accomplish long-term estate and gift tax planning.

Relevant portions of the General Explanations of the Administration’s Fiscal Year 2013 Revenue Proposals can be found by following this link: http://www.thsh.com/documents/s-Fiscal-Year-2013-Revenue-Proposals.pdf

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For more information, please feel free to contact any member of Tannenbaum Helpern’s Trust and Estates Practice: Joel S. Hirschtritt at hirschtritt@thsh.com, Yolanda Kanes at kanes@thsh.com, Judith L. Benkov at benkov@thsh.com, Harvey J. Platt at platt@thsh.com or Richard E. Schneyer at schneyer@thsh.com.