

## Transfer Tax Proposals in 2014 Obama Administration Budget

We are writing to discuss two transfer tax proposals in the 2014 budget released yesterday by the Obama Administration. The proposals are found in the so-called "Greenbook," which is released by the Treasury Department to explain the tax proposals in a proposed budget.

Beginning in 2018, the first proposal would make permanent the estate, gift and generation-skipping transfer tax "parameters" as they existed in 2009. The top tax rate would be 45%; the exclusion for estate and GST taxes would be \$3.5 million; and the exclusion amount for gift tax would be \$1 million. The exclusion amounts would *not* be indexed for inflation.

Portability of unused estate and gift tax exclusion between spouses would continue to be allowed.

In computing gift and estate tax liabilities, no estate or gift tax would be incurred by reason of decreases in the applicable exclusion amount with respect to a prior gift that was excluded from tax at the time of transfer (translated, this means that there is no "clawback" of earlier, non-taxable gifts).

The proposal would be effective for estates of decedents dying, and for transfers made, after December 31, 2017.

The second proposal of note involves the coordination of income and transfer tax rules applicable to "grantor trusts." In a nutshell, a grantor trust is a trust (or a portion of a trust), whether revocable or irrevocable, of which an individual is treated as the owner for income tax purposes.

Under the proposal, if a person is a deemed owner of a trust under the grantor trust rules and engages in a transaction with that trust which constitutes a sale or exchange (or a comparable transaction) that is disregarded for income tax purposes, the portion of the trust attributable to that property received by the trust in that transaction (including all retained income therefrom, any appreciation thereon, and reinvestments of, reduced by the amount of consideration received by the grantor the transaction) will be subject to estate tax as part of the gross estate of the grantor.

If the grantor trust status terminates during the grantor's life, the termination will be treated as a gift by the grantor to the extent a distribution is made to another person (except in discharge of the grantor's obligation to the distributee) during the life of grantor.

Notably, the transfer tax imposed will be payable from the trust.

This proposal is aimed at installment sales to intentionally defective grantor trusts. The provision would be effective as to trusts that engage in a "described transaction" after the enactment of the provision.

The proposal would not change the treatment of any trust that is includable in the grantor's gross estate for estate tax purposes, including grantor retained income trusts, grantor retained annuity trusts and qualified personal residence trusts. The proposal would *not* apply to any trust that is a grantor trust solely by reason of IRC section §677(a)(3), the provision that makes an insurance trust a grantor trust.

The Greenbook includes some other proposals: requiring consistency in value for transfer and income tax purposes, requiring a minimum term for grantor retained annuity trusts of ten years, and limiting the duration of trusts for generation-skipping transfer tax purposes.

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On a final note, it is quite possible that none of the proposals will be enacted in the near term, given the current composition of Congress. The provisions are nonetheless a salutary reminder that the supposed permanence of the transfer tax provisions in the American Taxpayer Relief Act of 2012 is illusory.

If you have any questions regarding this LEGALcurrents, please do not hesitate to contact any member of our firm's Trusts and Estates Practice Area at (585) 232-6500. ■



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