Make 2012 a banner year for your estate plan

By Marisa E. Alvarado

2012 is shaping up to be the most favorable year in recent memory to revise or create your estate plan. The Tax Relief Act of 2010 has created an ideal environment, but you need to act fast as the act will expire on Dec. 31, 2012. With new legislation sent to Congress by President Obama seeking to raise revenue, many changes to estate and gift tax provisions could reduce or eliminate favorable estate planning and tax reduction strategies currently available.

Here are some of the changes included in the proposal sent to Congress on February 13, 2012. If enacted, these changes will go into effect on December 31, 2012.

The time to act is now. By evaluating the proposed changes to tax laws and setting a course of action, you can make 2012 a banner year for your estate plan and maximize your tax benefits along the way. **LE**

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Summary of Changes to the Estate & Tax Regime

Under Current Law	After Sunset of Current Law	Obama Administration Proposal
Effective January 1, 2011 and set to sunset December 31, 2012	Effective Jan. 1, 2013	Effective Jan. 1, 2013
Maximum tax rate at 35 percent	Maximum tax rate at 55 percent	Maximum tax rate at 45 percent
Lifetime exemption of $5.12 million for estate	Lifetime exemption of $1 million for estate	Lifetime exemption of $3.5 million for estate
Lifetime exemption of $5.12 million for gifts	Lifetime exemption of $1 million for gifts	Lifetime exemption of $1 million for gifts
Lifetime exemption of $5.12 million for Generation-Skipping Transfers (GST)	Lifetime exemptions of approximately $1.42 million for GST transfers	Lifetime exemption of $3.5 million for GST transfers
Portability of the unused estate tax exemption to the surviving spouse so that it would not be lost at the death of the first spouse.	No portability available	Portability of unused estate tax exemption made permanent
Valuation discounts such as: 1) Lack of Marketability 2) Illiquidity 3) Minority Interest for transfers of interests in family-controlled entities (such as FLPs and LLCs) to family members offer leveraged gifting benefits.	No change	Valuation discounts would be disallowed for intrafamily transfers of interests in family-controlled entities to family members if the restrictions affecting the discounts lapse or may be modified after the transfer.
Grantor Retained Annuity Trust (GRAT) can have: 1) A term no shorter than 3 years and a maximum of life expectancy. 2) The remainder interest can be valued as low as zero as evidenced in the Walton GRAT case where the transfer of appreciated stock had little or no gift tax cost.	No change	GRATs would be required to have: 1) A minimum term of 10 years and a maximum of life expectancy. 2) The remainder interest must have a value greater than zero at the time the interest is created 3) Any decrease in the annuity during the GRAT term would be prohibited.
The sale by a grantor to an Intentionally Defective Grantor Trust (IDGT) which serves as: 1) A tremendous estate freezing technique with little or no capital gains tax consequences. 2) Nontaxable installment note payments (at the current mid-term AFR of 1.08 percent) to the grantor or for distributions from the trust. 3) No transfer tax when the grantor trust status is revoked or otherwise when the grantor stops being the income tax "owner" of the trust.	No change	The appreciating assets sold by a grantor to an IDGT are: 1) Included in the gross estate for estate tax purposes. 2) A taxable gift is created for any IDGT distributions. 3) And a taxable gift is created upon revocation of the grantor status.
The estate and GST tax planning technique utilizing GST trusts such as dynasty, legacy, or similar trusts can shelter trust assets from estate and GST tax liability over multiple generations.	No change	The maximum term of a GST trust would be 90 years, forcing the vesting of the trust assets, and resulting in transfer tax liability for the beneficiaries at the time of termination.