



Washington National Tax Quarterly Update

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Capitol Hill Update

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New Form 8937

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Agenda

Topic	Minutes
Capitol Hill update	30
Estate and gift tax proposals	30
Form 1099 reporting	10
New Form 8937	20

Objectives

By the end of this webcast, you will be able to:

- Demonstrate a high-level understanding of highlights from President Obama's budget and tax reform proposals
- Identify potential estate and gift tax changes
- Understand the increased attention to Form 1099
- Explain the new Form 8937 reporting requirements

Capitol Hill update

Overview

- President Obama's FY13 budget and other tax reform proposals
- Presidential candidates' tax reform proposals
- Tax extenders
- Top tax expenditures for 2010-2014

President Obama's recent actions

- State of the Union address before Congress on Jan. 24, 2012 calls for “fairness and equality”
- Fiscal year 2013 budget proposed to Congress on Feb. 13, 2012 includes a number of significant tax changes
- *Framework for Business Tax Reform*, released on Feb. 20, 2012, outlines specific elements of a comprehensive business tax reform program

Fiscal 2013 budget summary

- Revenue provisions would cost \$2.9 trillion for 2012 to 2022, according to Joint Committee on Taxation
 - \$3.9 trillion in tax reductions
 - \$946 billion in revenue raisers
- Major revenue losers
 - Extending, modifying several of the 2001 and 2003 tax cuts
 - Eliminating the AMT and implementing the “Buffett Rule” for certain taxpayers
 - Estate and gift tax changes
- Major revenue raisers
 - Cap itemized deductions and phase out personal exemptions for high-income taxpayers
 - Make changes to international tax system

Fiscal 2013 Budget: Effect on deficit

- Updated Congressional Budget Office (CBO) estimates
 - President's budget underestimates deficit from 2011 to 2020 by \$1.2 trillion
 - President's budget – increase deficit by \$8.532 trillion (4.5 percent of GDP) by 2020
 - CBO estimates – increase deficit by \$9.761 trillion (5.2 percent of GDP) by 2020
 - Total federal debt in 2020
 - President – \$18.5 trillion
 - CBO – \$20.3 trillion

Commonly-repeated underlying themes

- Recurring themes in State of the Union, budget proposal and *Framework for Business Tax Reform*
 - Fairness and equality
 - Job creation
 - Energy reform
 - Both personal and corporate tax reform as a key focus in all three areas

Framework for Business Tax Reform

- Business tax proposals – promote economic recovery and create jobs, especially manufacturing jobs
 - Doubling the domestic manufacturing deduction to 18 percent for certain industries
 - Extending 100 percent bonus depreciation on certain tangible property
 - Expanding and making permanent the research and development credit
- Business tax proposals – help small business
 - Making small business stock exclusion permanent
 - Making the current \$10k maximum deduction for start-up expenses permanent
 - Expanding the credits for small employers' health insurance contributions

Framework for Business Tax Reform (cont.)

- Business tax proposals – reduce U.S. statutory corporate tax rate and reform international provisions
 - Reducing the statutory corporate tax rate to make it more competitive globally
 - Creating a tax credit of 20 percent for moving operations back to the U.S.
 - Imposing a minimum tax on overseas profits
 - Subjecting certain income from intangibles used abroad to current U.S. tax
 - Using “pooling” to determine foreign tax credits

Framework for Business Tax Reform (cont.)

- Business tax proposals – equity and equality
 - Eliminating certain tax benefits for oil and gas companies
 - Eliminating special depreciation rules on corporate aircraft
 - Disallowing the deduction for non-taxed reinsurance premiums paid to affiliates
- Business tax proposals – revitalize communities
 - Manufacturing Communities Tax Credit
 - Extending and modifying the New Markets Tax Credit
 - Reforming and expanding the Low Income Housing Tax Credit
- Business tax proposals – green energy
 - Advanced energy tax credits
 - Tax credits for advanced technology vehicles
 - Extending and modifying certain energy incentives

Personal income tax proposals

- Personal tax proposals
 - Extending the payroll tax cut and unemployment benefits for the remainder of 2012 (passed and signed into law)
 - Letting the Bush-era tax cuts expire for certain high-income taxpayers
 - Taxing carried interests at ordinary tax rates
 - Replacing the current Alternative Minimum Tax (AMT) with the “Buffett Rule”
 - Increasing the maximum long-term capital gains tax rate to 20 percent
 - Permanently extending or expanding certain tax credits
 - Providing additional mortgage and student loan debt forgiveness exclusions

Tax extenders

- “Tax extenders” are provisions in the tax code that must be extended every year or two or they will expire
 - Ex.: Research and development (R&D) tax credit
- Some extenders are included in President Obama’s proposals
- Some extenders could be:
 - Separately passed by Congress this year and signed into law or
 - Passed by Congress next year, made retroactive and signed into law
- Joint Committee on Taxation List Of Expiring Federal Tax Provisions 2011-2022 (as of Jan. 13, 2012)
 - <http://www.jct.gov/publications.html?func=startdown&id=4383>

Romney's tax proposals

- Business tax reforms
 - Reduce statutory corporate tax rate from 35 percent to 25 percent
 - Make R&D tax credit permanent
 - Switch to a territorial tax system for international tax
 - Repeal corporate AMT
- Individual taxpayer reforms
 - Permanent, across-the-board 20 percent cut in marginal tax rates for individuals (top rate would be 28 percent)
 - Keep capital gains and qualified dividends rate at 15 percent; rate for families earning under \$200,000 would be zero
 - Eliminate the estate tax
 - Repeal the AMT

Santorum's tax proposals

- Business tax reforms
 - Cut statutory corporate tax rate to 17.5 percent and to zero for manufacturing activity
 - Make R&D tax credit permanent, increase it to 20 percent
 - Allow firms to repatriate overseas profits at either zero (if invested in plant and equipment) or 5.25 percent if invested in the U.S.
- Individual taxpayer reforms
 - Make permanent all tax cuts from 2001-2010, create two consolidated tax brackets of 10 percent and 28 percent
 - Cut tax rate on dividends and long-term capital gains to 12 percent
 - Eliminate the estate tax

Gingrich's tax proposals

- Business tax reforms
 - Reduce statutory corporate tax rate from 35 percent to 12.5 percent
 - Allow for full expensing of capital expenditures (other than residential rental real estate and inventory)
- Individual taxpayer reforms
 - An “optional” flat tax of 15 percent on all wages; zero tax on dividends, net capital gains and interest income
 - Establish a \$12,000 deduction for each individual and dependent
 - Repeal the AMT

Likelihood of passage of all or some proposals



Top five corporate tax expenditures, 2010-2014

Cost of tax expenditure (\$ billion)	Cost
Deferral of active income of controlled foreign corporations	\$71
Exclusion of interest on state and local government bonds	\$45
Deduction for income attributable to domestic production activities	\$43
Inventory property sales source rule exception	\$38
Depreciation of equipment in excess of alternative depreciation system	\$37

From Tom Barthold's Sept. 22, 2011 testimony before the Joint Select Committee on Deficit Reduction.

Top five individual tax expenditures, 2010-2014

Cost of tax expenditure (\$ billion)	Cost
Exclusion of employer-provided contributions for health care, health insurance premiums and long-term care premiums	\$659
Deduction for mortgage interest on owner-occupied residences	\$484
Reduced rate of tax on dividends and long-term capital gains	\$403
Net exclusion of pension contributions and earnings	\$303
Earned income tax credit	\$269

From Tom Barthold's Sept. 22, 2011 testimony before the Joint Select Committee on Deficit Reduction.

Estate and gift tax proposals

Overview

- Administration's estate and gift proposals
 - Reversion of the estate and gift tax rates and exemptions back to 2009 levels
 - Portable estate tax exclusion made permanent
 - Basis reporting requirements for gifted and inherited property
 - Tightened availability of valuation discounts between related parties
 - Restrictions regarding the use of grantor retained annuity trusts (GRATs)
 - Elimination of the tax benefits associated with the sale to an intentionally defective grantor trust (IDGT)
 - Duration of generation-skipping transfer (GST) tax exemption limited
- Proposal to eliminate inherited stretch IRAs
- Putting the proposals in proper context

Reversion of the estate and gift rates and exemptions to 2009 levels

- Administration's estate and gift proposals
 - Maximum rates increased from 35 percent to 45 percent
 - Lifetime exemptions reduced to 2009 levels
 - Exemptions made permanent (no COLA increases)
- Changes effective Jan. 1, 2013
- Proposal preserves favorable 2012 provisions – NO CLAWBACK

Reversion of the estate and gift rates and exemptions to 2009 levels (cont.)

	2012	Proposal
Max. estate, GST and gift tax rate	35%	45%
Estate lifetime exemption	\$5,120,000 *	\$ 3,500,000
GST tax lifetime exemption	5,120,000 *	3,500,000
Gift tax lifetime exemption	5,120,000 *	1,000,000
Gift tax annual exclusion	13,000 *	13,000 *
GST tax annual exclusion	13,000 **	13,000 **

* Adjusted by inflation

** Direct skips only

*** GST tax

Reversion of the estate and gift rates and exemptions to 2009 levels (cont.)

- Effective date – Jan. 1, 2013
 - Eliminates “claw back”
 - Establishes lost “opportunity cost”
- Gift tax opportunity cost is \$1,828,780 per person
 - \$3,657,560 per married couple
 - No state gift tax*

* Exceptions are Connecticut and Tennessee

Portability of deceased spouse's exclusion

- Eliminates need to create an A/B trust formula
 - To preserve the exclusion, the filing of an estate tax return (Form 706) is required
 - Modest estates with no tax liability would consider filing a Form 706
 - A Form 706EZ has been discussed, but there have been no recent developments
- Special 2012 estate tax compliance issue
 - Modest estates protect the full \$5.12 million lifetime exclusion
 - Exemption projected to be protected even with 2013 proposed administrative changes

Basis reporting requirements

- Basis is limited by amount reported on gift tax or estate tax return
- Reporting requirements similar to those on Form 8939
- Gifts – donor required to report basis to donees
- Estate – executor required to report basis to beneficiaries
- Effective date – date of enactment

Tightened availability of valuation discounts

- Proposal similar to the 2009 proposal
- Eliminates valuation discounts between related parties that arise from the following:
 - For transfers of an interest in a family-controlled entity to a member of the family
 - After the transfer, the restriction will lapse or
 - May be removed by the transferor and/or the transferor's family
- Meant to eliminate the use of valuation discounts for liquid assets transferred into FLPs or LLCs
- Broad definition of “related party” (section 267)
- Special planning may be required for transfers of closely-held interests
- Effective date – date of enactment

Restrictions regarding GRATs

- Proposal similar to the 2009 proposal
- Current GRAT planning
 - Short-term GRATs
 - Zero out GRATs (also known as Walton GRATs)
- Administrative proposal would:
 - Require a minimum 10-year term
 - Require a minimum taxable gift over “zero”
 - Any annuity decrease would be prohibited
- Eliminates planning by retirees
- Taxable gift would require the filing of the Form 709 as well as full disclosure with the transfer into the GRAT
- Effective date – date of enactment

Elimination of tax benefits related to sale to an IDGT

- New proposal
 - This proposal would discourage the use of this planning strategy by including the appreciated IDGT assets in the grantor's gross estate for estate tax purposes
 - If distributed prior to death of the seller, it would create a taxable gift for any IDGT distributions at the fair market value (FMV)
 - IDGT is fully taxed on the FMV of the IDGT when the grantor stops being the income tax "owner" of the trust
- Proposal would effectively eliminate the use of this planning strategy
- Effective date:
 - IDGTs created on or after the enactment date
 - Any amounts contributed to an IDGT on or after the enactment date

Duration of GST trust term limited

- New proposal
 - On the 90th anniversary of the creation of a trust, the GST tax exclusion allocated to the trust would terminate
 - Trust vests to beneficiaries alive at the 90th anniversary date
 - Intended to eliminate dynasty trusts executed in states with long perpetuities (*e.g.*, Florida 360 years) or states with no perpetuities (*e.g.*, Illinois)
- Would apply to the following:
 - Trusts created after the date of enactment
 - Trust contributions made after date of enactment

Elimination of stretch IRAs

- Proposal to eliminate stretch IRAs
 - Proposal found in Highway Investment, Job Creation and Economic Growth Act of 2012
 - Would eliminate all stretch IRAs and require non-spousal IRA distributions over five years
 - Would include both traditional and Roth IRAs
 - Very, very unlikely to pass; however:
 - Provides Congressional insight on this issue
 - Shows what can possibly happen

A final word!

- Nothing is currently binding, this is merely the Administration's "wish list"
- These proposals do provide an indication toward the future direction of the estate, GST and gift tax laws
- Since we currently enjoy a number of favorable planning strategies that may be lost by the end of the year... the time to plan is now!

Form 1099 reporting

Increased enforcement of 1099 reporting

- Patient Protection and Affordable Care Act introduced new, more onerous reporting requirements BUT they were repealed before effective date
- Old rules still effective
- Added probing compliance questions to other forms
 - Forms 1120, 1120S, 1065 and 1040 Schedules C, E and F
 - Preparers are signing these forms
- Penalties may apply

Who is required to file form 1099

- Requirements
 - Payments of \$600 or more
 - Made by trade or business
 - For services by non-employees who are not corporations
- Examples
 - Professional fees (McGladrey!)
 - Commissions to salespersons
 - Repair services
 - Directors' fees
- Payments made by credit card must be reported by payment settlement entity, so no 1099-MISC requirement

Important filing information

- Generally, due Jan. 31 to payee and Feb. 28 to IRS
- Information needed

1595 VOID CORRECTED
 not a corporation.

PAYER'S name, street address, city, state, ZIP code, and telephone no. Z Builders 123 Maple Avenue Oaktown, AL 00000 555-555-1212		1 Rents \$	OMB No. 1545-0115 2012 Form 1099-MISC	Miscellaneous Income
PAYER'S Federal identification number 10-9999999	RECIPIENT'S identification number 123-00-6789	2 Royalties \$	3 Other income \$	4 Federal income tax withheld \$
RECIPIENT'S name Ronald Green dba/ Y Drywall		5 Fishing boat proceeds \$	6 Medical and health care payments \$	Copy A For Internal Revenue Service Center File with Form 1096. For Privacy Act and Paperwork Reduction Act Notice, see the 2012 General Instructions for Certain Information Returns
Street address (including apt. no.) 456 Flower Lane		7 Nonemployee compensation \$ 5500.00	8 Substitute payments in lieu of dividends or interest \$	
City, state, and ZIP code Oaktown, AL 00000 Account number (see instructions) _____ 2nd TIN not. <input type="checkbox"/>		9 Payer made direct sales of \$5,000 or more of consumer products to a buyer (recipient) for resale <input type="checkbox"/>	10 Crop insurance proceeds \$	
11 _____ 12 _____		13 Excess golden parachute payments \$	14 Gross proceeds paid to an attorney \$	
15a Section 409A deferrals \$	15b Section 409A income \$	16 State tax withheld \$	17 State/Payer's state no. -----	18 State income \$

Form **1099-MISC** Cat. No. 14425J Department of the Treasury - Internal Revenue Service

New Form 8937:
Report of Organizational Actions Affecting
Basis of Securities

Form 8937

Genesis

Effective date

Who must file

Who must receive filing

When you must file

Form 8937 (cont.)

What is a “security”?

What is an “organizational action”?

- Tax-free stock dividend
- Tax-free spin-off
- Nontaxable cash/property distribution
- Tax-free recapitalization

Form 8937 (cont.)

Penalties

Exceptions

- Public reporting
- Exempt recipients
- S corporations
- Certain RICs and REITs

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Form 1099

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