

Obama Administration's 2016 Revenue Proposals

Bios



As Chair of Moses & Singer's Trusts and Estates and Asset Protection practices, Gideon Rothschild focuses on domestic and international estate planning and asset protection. He is a nationally-recognized authority on the use of offshore trusts and estate planning strategies for wealth preservation and succession planning. His practice also includes estate administration and the representation of clients in taxpayer disputes at the federal, state and local levels. Gideon is the current chair of the ABA's Real Property Trust & Estate Law Section, a Fellow of the American College of Trust & Estate Counsel, an Academician of the International Academy of Estate & Trust Lawyers, and a Vice-Chair of the Society of Trust & Estate Practitioners.



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Estate and Gift Taxes

- Permanently institute 2009 estate, GST and gift tax rules
 - Exclusion amounts (not to be indexed for inflation)
 - \$3.5 million for estate and GST taxes
 - \$1 million for gift taxes
- 45% top tax rate

GRATs

- Minimum term of 10 years
- Maximum term of annuitant's life expectancy, plus 10 years
- Remainder interest must have minimum value equal to greater of 25% of value of assets contributed or \$500,000 (but not more than value of assets contributed)
- Annuity may not be decreased during term
- Grantor may not exchange assets held in trust without incurring tax

Sales to Grantor Trusts

- Where sales to trust are disregarded for income tax purposes:
 - Property will be subject to estate tax as part of grantor's gross estate
 - Property will be subject to gift tax if grantor is no longer "deemed owner" of trust
 - Property will be subject to gift tax upon discretionary distribution of trust property to another person
- Prior taxable gifts not subject to transfer tax
- Transfer tax payable from trust

Sale to Grantor Trusts (cont'd)

- Proposal not applicable to:
 - Trusts already includable in grantor's gross estate
 - GRITs
 - GRATs
 - Personal residence trusts
 - Qualified personal residence trusts
 - ILITs holding insurance on the life of the grantor and/or the grantor's spouse

GST Tax Exemption

- GST exclusion limited to 90 years
 - Inclusion ratio of trust increased to 1, rendering no part of the trust exempt
 - 90 year rule applies to separate contributions from separate grantors

GST Tax Treatment of HEETs

- Explicitly excludes Health and Education Exclusion Trusts from claiming exemption from GST tax under Sec. 2611(b)(1)
 - HEETs are dynasty trusts intended to pay medical and tuition expenses of persons two or more generations younger than the grantor
 - At least one beneficiary must be a charity with a substantial present economic interest

Gift Tax Exclusion for Annual Gifts

- Exclusion limited to \$50,000 per donor per annum (indexed for inflation) instead of \$14,000 per donee per annum, but present interest requirement for gifts eliminated, allowing exclusion to apply to gifts made in trust even without Crummey powers

Capital Gains

- Increase highest long-term capital gains from 20% to 24.2%
 - 3.8% net investment income tax would continue to apply
- Donative transfers of appreciated property treated as sales
 - Donor or decedent realizes capital gain at time of gift or bequest/devise
 - Gain is excess of FMV of asset over donor's basis
- Capital gain on donative transfers to spouses not realized until spouse disposes of the asset or dies
- Gain on tangible personal property (excluding collectibles) is exempt
 - Collectibles are works of art, rugs, antiques, metals (such as gold, silver and platinum bullion), gems, stamps, coins or alcoholic beverages. Collectibles gain includes gain from sale of an interest in a partnership, S corporation or trust due to unrealized appreciation of collectibles

Capital Income (cont'd)

- Exclusions
 - \$100,000 per person exclusion of capital gains recognized at death
 - Indexed for inflation
 - Portable to surviving spouse if unused by decedent
 - Additional \$250,000 per person exclusion of capital gain on principal residence
 - Portable to surviving spouse if unused by decedent
 - Exclusion under current law for capital gain on qualified small business stock
 - “Qualified small business stock”: (1) in a C corporation originally issued after 1993 and acquired by the taxpayer at “original issue”, (2) in a business with assets that do not exceed \$50 million, (3) in a corporation that is an active business, and (4) has been held for more than 5 years
 - Payment of tax on appreciation of certain family-owned and family-operated businesses not due until business is sold or ceases to be family-owned or operated
- 15 year fixed-rate payment plan for tax on appreciated assets transferred at death, other than liquid assets and businesses for which deferral election is made

“Fair Share Tax”

- New minimum tax imposed on high-income taxpayers
 - Tentative FST is 30% of AGI, less a credit for charitable contributions
 - Charitable credit would equal 28% of itemized charitable contributions allowed
 - FST is excess, if any, of the tentative FST over the sum of the taxpayer’s (1) regular income tax, (2) alternative minimum tax and (3) employee portion of payroll taxes
- Phased in starting at \$1 million of AGI, fully phased in at \$2 million

Closing Tax Loopholes

- Non-spouse beneficiaries of qualified retirement plans and IRAs required to take distributions over no more than 5 years
 - Exception for beneficiaries who are disabled, chronically ill, less than 10 years younger than the participant or who have not reached age of majority
- Prohibition on taxpayers, who have accumulated amounts in tax-favored retirement accounts in excess of amount necessary to make the maximum annuity payment, from making additional contributions or receiving additional accruals

Planning Opportunities

- Consider funding GRATs and perpetual trusts now.
- Consider sales to grantor trusts
- Swap low basis assets out of grantor trusts
- Review insurance “Crummey” trusts and consider maximum funding

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