

January 7, 2013

The Cliff-Hanger (Chapter One) is Over: Highlights of the American Taxpayer Relief Act of 2012

On January 2, 2013, President Obama signed into law the American Taxpayer Relief Act of 2012 (the Act), effective as of January 1, 2013. In general, the Act made permanent for most taxpayers the tax rate cuts first enacted under President Bush in 2001 and 2003, and extended certain expiring temporary individual and business tax cuts through 2013. Below are our “fiscal cliff notes” of some of the significant provisions of the Act.

Individual

- Maintaining current tax rates – The Act maintained current income tax rates for all taxpayers other than “high-income taxpayers”:
 - The highest marginal tax rate for “high-income taxpayers” has increased from 35% to 39.6%, and the rate of tax on qualified dividends and capital gains of such taxpayers is increased from 15% to 20% (in addition to the potential 3.8% net investment income tax levied under the Patient Protection and Affordable Care Act). The taxable income threshold for high-income taxpayers is \$450,000 for married taxpayers who file jointly and \$400,000 for single taxpayers. Although tax rates will remain the same for taxpayers who earn less than these amounts, personal exemptions and itemized deductions will be limited for married taxpayers filing jointly with adjusted gross incomes greater than \$300,000, and single taxpayers with adjusted gross incomes greater than \$250,000. The IRS has released updated withholding guidance, which is available [here](#).
 - No Impact on Backup Withholding Rates – The backup withholding rate under Internal Revenue Code (IRC) § 3406, which is keyed to the marginal tax rates on individuals, remains at 28% following the enactment of the Act.
- The Act indexed the exemption amounts under the Alternative Minimum Tax (AMT), thereby providing a permanent fix to the AMT, rather than the temporary “patches” that Congress has enacted in the past.
- The maximum gift, estate, and generation-skipping transfer (GST) tax rate increased from 35% to 40%, but the exemption amount of \$5 million (indexed for inflation and \$5.25 million for 2013) is unified for all three taxes and has been made permanent. Also made permanent are spousal portability of unused estate tax exemptions, special provisions regarding the allocation of the GST exemption, and provisions liberalizing the availability of estate tax deferral under IRC § 6166.
- The Act modified the Roth conversion rules for defined contribution plans. Current law permits participants in defined contribution plans that permit an in-plan Roth conversion to convert distributable pre-tax plan assets (generally, distributable because the participant has reached age 59 ½ or has separated from service) to after-tax savings in a separate Roth account under the plan. Under the Act, the “distributable” requirement is eliminated, allowing any pre-tax amount to be converted if the plan offers Roth contributions and permits a Roth conversion, whether or not

© 2013 Sutherland Asbill & Brennan LLP. All Rights Reserved.

This communication is for general informational purposes only and is not intended to constitute legal advice or a recommended course of action in any given situation. This communication is not intended to be, and should not be, relied upon by the recipient in making decisions of a legal nature with respect to the issues discussed herein. The recipient is encouraged to consult independent counsel before making any decisions or taking any action concerning the matters in this communication. This communication does not create an attorney-client relationship between Sutherland and the recipient.

the amount is distributable. The participant is required to include in income, subject to ordinary income tax rates, the converted amount for the taxable year of the conversion.

International

- Look-through treatment for payments made between related controlled foreign corporations under the foreign personal holding company rules (IRC § 954(c)(6)) was extended retroactively to taxable years beginning after January 1, 2012. The provision now expires on December 31, 2013.
- The Act extended the subpart F exception applicable to the active conduct of banking, financing, insurance, or similar businesses until December 31, 2013. See IRC § 954(h) and (i). The extension is retroactive for the 2012 tax year.
- The Act retroactively extended the exemption from taxation of certain dividends of regulated investment companies (RICs) paid to a foreign person under IRC § 871(k), until December 31, 2013. The Act also extended “qualified investment entity” treatment of RICs retroactively until December 31, 2013 (except for withholdings made under IRC § 1445).

Corporate

- The research credit under IRC § 41 was extended retroactively until December 31, 2013. The Act modified the credit by providing for the partial inclusion of pre-acquisition research expenses and gross receipts.
- The Act extended and modified the 50% bonus depreciation, under IRC § 168(k), and the special rule for allocating bonus depreciation, under IRC § 460(c)(6)(B), for assets placed into service before January 1, 2014, or in the case of certain property having longer production periods, January 1, 2015. The election to accelerate the AMT and research credits in lieu of bonus depreciation, under IRC § 168(k)(4)(D)(iii), was extended to property with an adjusted basis attributable to manufacture, construction, or production before January 1, 2014. The Act also added a special rule for “round 3 extension property” (i.e., property that is “eligible qualified property” solely by reason of the extension of the special allowance rule under the Act).

Energy

- The Act changed the deadline for all section 45 production tax credit (PTC) eligible renewable energy projects to require that a taxpayer must have “begun construction” of the project by the end of 2013, replacing the requirement that a taxpayer must have “placed in service” the project by the end of 2013 (2012 for wind). The Act also extended tax credits for wind projects that begin construction before the end of 2013. These changes also apply to the section 48 investment tax credit (ITC) in lieu of the PTC, allowing taxpayers to claim an ITC for PTC-eligible projects that begin construction before the end of 2013. PTC eligible projects include those utilizing wind, biomass, geothermal, landfill gas, trash, hydropower, and marine and hydrokinetic energy. It is currently unclear which test(s) the IRS will use to determine whether construction has begun by year-end.

- The Act extended the incentives for production and use of biodiesel, renewable diesel, and alternative fuels under IRC §§ 40A, 6426, 6427 and 34 until December 31, 2013, retroactive to January 1, 2012. However, the Act did not extend the alternative fuel mixture payment available under IRC § 6427 (and thus under IRC § 34). The Act did not provide guidance, or instruct the IRS to provide guidance, on how to claim the 2012 retroactively reinstated fuels credits.¹



If you have any questions about this Legal Alert, please feel free to contact any of the attorneys listed below or the Sutherland attorney with whom you regularly work.

Robert S. Chase II	202.383.0194	robb.chase@sutherland.com
Adam B. Cohen	202.383.0167	adam.cohen@sutherland.com
Nikola R. Djuric	404.853.8486	nick.djuric@sutherland.com
Daniel R. McKeithen	404.853.8342	daniel.mckeithen@sutherland.com
Alice Murtos	404.853.8410	alice.murtos@sutherland.com
Amish M. Shah	202.383.0456	amish.shah@sutherland.com
Douglas L. Siegler	202.383.0220	doug.siegler@sutherland.com
Carol P. Tello	202.383.0769	carol.tello@sutherland.com
Dwaune L. Dupree	202.383.0206	dwaune.dupree@sutherland.com

¹ For a copy of our Legal Alert that further addresses energy tax changes in the Act, please click [here](#).