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## Michael Kitces summarizes the new tax law

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By Editor Test     *Mon, Jan 7, 2013*

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*The well-known advisor/author (at left) tells you what you need to know about the tax law that averted (or at least delayed) the so-called fiscal cliff.*

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In a recent [blogpost](#), advisor/author Michael Kitces summarized elements of the recently-pass tax legislation, H.R. 8 (the [American Taxpayer Relief Act of 2012](#), or ATRA) that might affect financial advisors and their clients.

The legislation averted or at least delayed the much-hyped “fiscal cliff.” It extends most of the Bush-era tax cuts that would have expired at the end of 2012 and reinstates a few rules that expired in 2011.

The legislation also introduces a new maximum tax bracket of 39.6% and increases the maximum long-term capital gains and qualified dividend rates to 20%.

Kitces noted the following changes in particular:

- The \$450,000 income threshold (taxable income after all deductions, not Adjusted Gross Income) for married couples is a mild form of marriage penalty release. In the past, the top tax bracket threshold was the same for both individuals and married couples.
- The 35% tax bracket is still in effect; it’s now one of the smallest tax brackets, applying only to income between \$388,350 and \$400,000 for individuals (\$388,350 to \$450,000 for married couples).
- The Personal Exemption Phaseout (PEP) used to have a different threshold from the Pease limitation; ATRA unifies these thresholds.
- The top estate tax (and gift and GST) rate is increased to a new maximum rate of 40%, up from 35%.
- The portability rules for a deceased spouse’s unused estate tax exemption amount are made permanent, which may significantly reduce the use of bypass trusts for all but the wealthiest of families.
- Individuals who are subject to the new 20% top long-term capital gains and qualified dividends tax rate will actually find their capital gains and dividends taxes at 23.8%, due to the onset of the new 3.8% Medicare tax on net investment income that would also apply at this income level.
- A special rule allows qualified charitable distributions made by February 1, 2013 to be counted retroactively for the 2012 tax year, for those who want to take advantage of the rule for 2012 and 2013.
- The 2% payroll tax cut that has been in place for the past 2 years was *not* extended, and has lapsed. Payroll withholding will need to be adjusted for employees in 2013 (and per the recent Treasury regulations, high income individuals will also need to adjust withholding later in 2013 for the new 0.9% Medicare tax on earned income).
- The rules appear to allow the new intra-plan Roth conversions for 401(k), 403(b), and 457 plans. But you still can’t go *from* a 401(k) (or other employer retirement plan) *to* the IRA unless you’re otherwise eligible for a distribution from the retirement plan.