How the SECURE Act May Impact Your Retirement Account

On December 20, 2019, President Trump signed the SECURE Act, which came into effect on January 1, 2020. The SECURE Act has important consequences for estate and personal tax planning related to qualified retirement plans and individual retirement accounts (collectively referred to in this article as "retirement accounts").

Below is a brief summary of selected new rules applicable to estate and personal tax planning. Of course, the new rules are complex and each client's circumstances should be analyzed on a case by case basis.

Required Minimum Distribution Age

Before the enactment of the SECURE Act, retirement account holders were generally required to start taking required minimum distributions ("RMDs") on April 1 of the year following the year in which the account holder reached age 70 ½. This is known as the required beginning date ("RBD"). The SECURE Act changed the RBD. Retirement Account holders who do not reach age 70 ½ by December 31, 2019 are not required to take RMDs until April 1 of the year following the year in which they reach age 72.

Maximum Contribution Age

Before the enactment of the SECURE Act, individuals could not contribute to traditional individual retirement accounts ("IRAs") after age 70 ½. Individuals can now make contributions to traditional IRAs provided that they have earned income regardless of the age of the contributor.

New 10-Year Rule for Most Beneficiaries

Before the enactment of the SECURE Act, if a retirement account holder died before reaching the RBD, the beneficiary generally took RMDs over the course of his or her life expectancy. The SECURE Act has changed this rule with respect to "designated beneficiaries" who are not "eligible designated beneficiaries" and who are beneficiaries of retirement accounts with account holders who die on or after January 1, 2020. Designated beneficiaries are any individuals or see-through trusts designated by the account holder as the beneficiary of a retirement account. Eligible designated beneficiaries are beneficiaries designated by the account holder who are the account holder's spouse, the account holder's minor children until they reach majority, chronically ill and disabled individuals, and individuals not more than 10 years younger than the account holder.

Under the SECURE Act, in general, designated beneficiaries now must withdraw all assets from a retirement account by December 31 of the year in which the 10 year anniversary of the account holder's death occurs. For example, assume that X, the owner of a retirement account, dies on June 20, 2020, and had designated his niece, Y, as the beneficiary. Y will be required to take all distributions from the retirement account by December 31, 2030.

On the other hand, eligible designated beneficiaries generally can still take RMDs over the life expectancy of the beneficiary.

The SECURE Act has not made any changes with respect to "non-designated beneficiaries". Non-designated beneficiaries are any beneficiary who is the account holder's estate, a charity or a trust that is not a see-through trust (as described below) and any beneficiary not explicitly designated by the account holder. In the case of non-designated beneficiaries, if the account holder died before reaching the RBD, the entire retirement account must be withdrawn by December 31 of the year in which the 5 year anniversary of the account holder's death occurs. If the account holder died after reaching the RBD, a non-designated beneficiary can still take RMDs over the remaining life expectancy of the account holder.

Trusts

Certain trusts, which are referred to as "see-through trusts" can qualify as designated beneficiaries of a retirement account. This remains unchanged under the SECURE Act. There are two types of see-through trusts: (1) conduit trusts and (2) accumulation trusts. Conduit trusts make all distributions from a retirement account to the beneficiary of the trust as they are received by the trust, whereas accumulation trusts can accumulate distributions from a retirement account and make those distributions at a later time.

Before the enactment of the SECURE Act, see-through trusts for the benefit of a designated beneficiary could generally distribute RMDs from the retirement account over the life expectancy of the beneficiary. Now under the SECURE Act, see-through trusts for the benefit of designated beneficiaries (both eligible and non-eligible) are generally subject to the new 10-year rule. However, under the new rules, accumulation trusts for the benefit of chronically ill or disabled designated beneficiaries, and conduit trusts for the benefit of any eligible designated beneficiary, can still take RMDs over the life expectancy of the beneficiary.

Planning Suggestions

Individuals with retirement accounts should revisit their beneficiary designations in the wake of the SECURE Act. Similarly, clauses in wills and revocable trusts that are designed to deal with trust distributions of retirement account RMDs should be revisited in light of the recent changes.

In some cases, the possibility of converting traditional retirement accounts to roth retirement accounts, designating charities or charitable remainder trusts as beneficiaries, or other planning opportunities, could be explored and may be appropriate.

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