SECURE ACT BRINGS MAJOR CHANGES TO RETIREMENT AND ESTATE PLANNING

Hodgson Russ Trusts & Estates Alert
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On December 20, 2019, President Trump signed a two-part spending bill funding the federal government through Fiscal Year 2020. Among the many provisions included with the spending bill is the Setting Every Community Up for Retirement Enhancement (SECURE) Act. The SECURE Act enacts major changes to rules related to individual and employer sponsored retirement accounts and may also materially alter estate plans incorporating retirement accounts.

Three of the most significant changes are highlighted below.

Required Minimum Distributions Begin at Age 72

Current law: Traditional IRAs and employer-sponsored plans are subject to Required Minimum Distribution (RMD) rules. Distributions from 401(k), 403(b), and 457 plans must begin by April 1 of the year following the *later* of (1) the year the participant turns age 70½, or (2) the year in which the participant (who is not a 5% owner of the business) retires. Similarly, withdrawals from traditional IRAs must begin by April 1 of the year following the year in which the IRA owner turns age 70½, regardless of employment status.

New law: The SECURE Act increases the RMD beginning age from 70½ to 72 for both employer sponsored plans and IRAs. This change only applies to individuals who have not attained the age of 70½ by December 31, 2019. In addition to easing the beginning date calculation, this change allows individuals who do not require funds from their IRAs or employer sponsored retirement plans to achieve an additional period of tax-deferred growth.

Repeal of Maximum Age for Traditional IRA Contributions

Current law: Only taxpayers under age 70½ with earned income may contribute to traditional IRAs.

New law: Effective for contributions for tax years after December 31, 2019, the SECURE Act repeals the maximum age limitation, which brings it in line with other retirements account types such as Roth IRAs and 401(k)s. For individuals who continue to work past age 70 ½ this repeal presents an additional method of tax-deferred saving. The repeal of the maximum age also allows higher earning individuals additional opportunities for Roth conversions.

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Higher earning individuals are still not eligible for an income tax deduction on contributions to a traditional IRA or the ability to contribute directly to a Roth IRA. The repeal of the maximum age does, however, allow higher earners beyond age 70 ½ to make non-deductible contributions to a traditional IRA and then convert the non-deductible contributions tax-free to a Roth IRA. This Roth conversion strategy allows for tax-free growth on both the earnings and distributions from the Roth IRA. Additionally, a Roth conversion removes the converted funds from RMD rules because Roth IRAs are not subject to the RMD requirement during the owner's lifetime.

Elimination of the Stretch RMD Provision

Current law: RMD calculations for certain designated beneficiaries of inherited IRAs and other eligible retirement plans use the account beneficiary's life expectancy. If the beneficiary is considerably younger than the deceased owner, required withdrawals could be "stretched" for many years due to longer life expectancy.

New law: Generally effective with respect to employees and IRA owners who die after December 31, 2019, the SECURE Act eliminates the stretch RMD option and requires certain beneficiaries to withdraw all assets within 10 years of inheriting the account. Significantly, this change does not apply to all beneficiaries, including surviving spouses, minor children, disabled individuals, the chronically ill, and beneficiaries not more than ten years younger than the employee or IRA owner.

Elimination of the stretch provision may materially impact estate plans incorporating "pass-through" trusts for younger beneficiaries designed to restrict access to the funds and limit the tax impact of RMDs. Without the stretch provision, a younger trust beneficiary with retirement account assets may bear a tax burden incompatible with their access to trust assets.

The SECURE Act is the first significant change to retirement planning legislation in nearly two decades and will impact every individual owner and beneficiary of a retirement account. If you would like to discuss how these new laws may impact your retirement or estate planning, please contact one of the Trusts and Estates Practice attorneys at Hodgson Russ.

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