Goodwin Alerts
January 15, 2020

Secure Act Significantly Changes Retirement (and Estate) Planning Landscape

by Matthew F. Fecteau

Speed Read

The "Setting Every Community Up for Retirement Enhancement Act ("the SECURE Act") changes the tax treatment of inherited IRAs: so-called "Stretch IRAs" are no longer available for a beneficiary's lifespan. The SECURE Act includes additional changes to the tax code impacting a variety of areas. This client alert discusses changes that impact estate planning; there are many other significant changes that directly impact plan sponsors, asset managers, and insurance companies that are not addressed in this alert.

On December 20, 2019, the SECURE Act was signed into law as part of a larger government spending bill. The SECURE Act makes numerous distinct alterations to the laws governing retirement plans, most of which are technical in nature; the most significant change for estate planning clients is the restriction of the so-called "Stretch IRA."

When an IRA or 401(k) participant dies, their retirement account can be left to the beneficiaries he or she designates. After the participant dies, his or her beneficiary is required to take annual minimum distributions. The SECURE Act provides that all retirement assets inherited from someone who has died must be distributed within 10 years of the participant's death. Spouses, certain physically or mentally disabled beneficiaries, and beneficiaries who are fewer than 10 years younger than the deceased participant are excepted from this time restriction. Additionally, minor children of the participant are allowed to take the distributions within 10 years from the date they reach the age of majority.

Congress was concerned that retirement plan participants were using tax-deferred retirement accounts as estate planning vehicles rather than as retirement savings accounts. Prior to the enactment of the SECURE Act, a beneficiary who inherited an IRA could stretch the required distributions over their own life expectancy, a practice that allowed the inherited assets to grow tax-deferred for decades after the original account owner's death.

These modifications may hold consequences for retirement plan participants who have designated their children or grandchildren (or trusts for their benefit) as the plan's beneficiaries. We are happy to assist you with any questions or concerns you may have about your retirement accounts.

The SECURE Act includes many other changes to the tax code, including:

- The age at which Required Minimum Distributions ("RMDs") begin will be raised from 70.5 to 72.
- The law repeals the maximum age to contribute to a traditional IRA, previously capped at 70.5.
- Part-time employees will now be eligible to participate in their employers' 401(k) plans if they work more than 1000 hours in a single year or more than 500 hours in each of three consecutive years.
- 529 account assets will be able to be used for apprenticeship expenses and some qualified student loan payments.
- Penalty-free withdrawals from 401(k) and IRA accounts will be available for birth and adoption expenses.

- The so-called “Kiddie Tax” was reinstated after having been repealed by the 2017 Tax Cuts and Jobs Act (“TCJA”). Prior to the TCJA, a minor’s unearned income was taxed at a rate equal to the top marginal tax rate of his or her parents. The TCJA repealed that tax provision, causing a minor’s unearned income to be taxed instead at the rates applicable to trusts. The SECURE Act restores the Kiddie Tax to pre-TCJA rates.

* * *

Change to Private Foundation Net Investment Income Tax Rate

The budget bill that included the SECURE Act also made another change to the tax code that may be relevant to estate planning clients. Code Section 4940 imposed an excise tax of 2% on the net investment income of most domestic tax-exempt private foundations, including private operating foundations. Under Code Section 4940(e), if certain requirements were met, the tax was reduced to 1%. The SECURE Act replaces the two-tiered structure with a single rate of 1.39%, effective for taxable years beginning after the date of the enactment of the Act.

CONTACTS:

Matthew F. Fecteau
Associate
+1 617 570 1588
mfecteau@goodwinlaw.com
