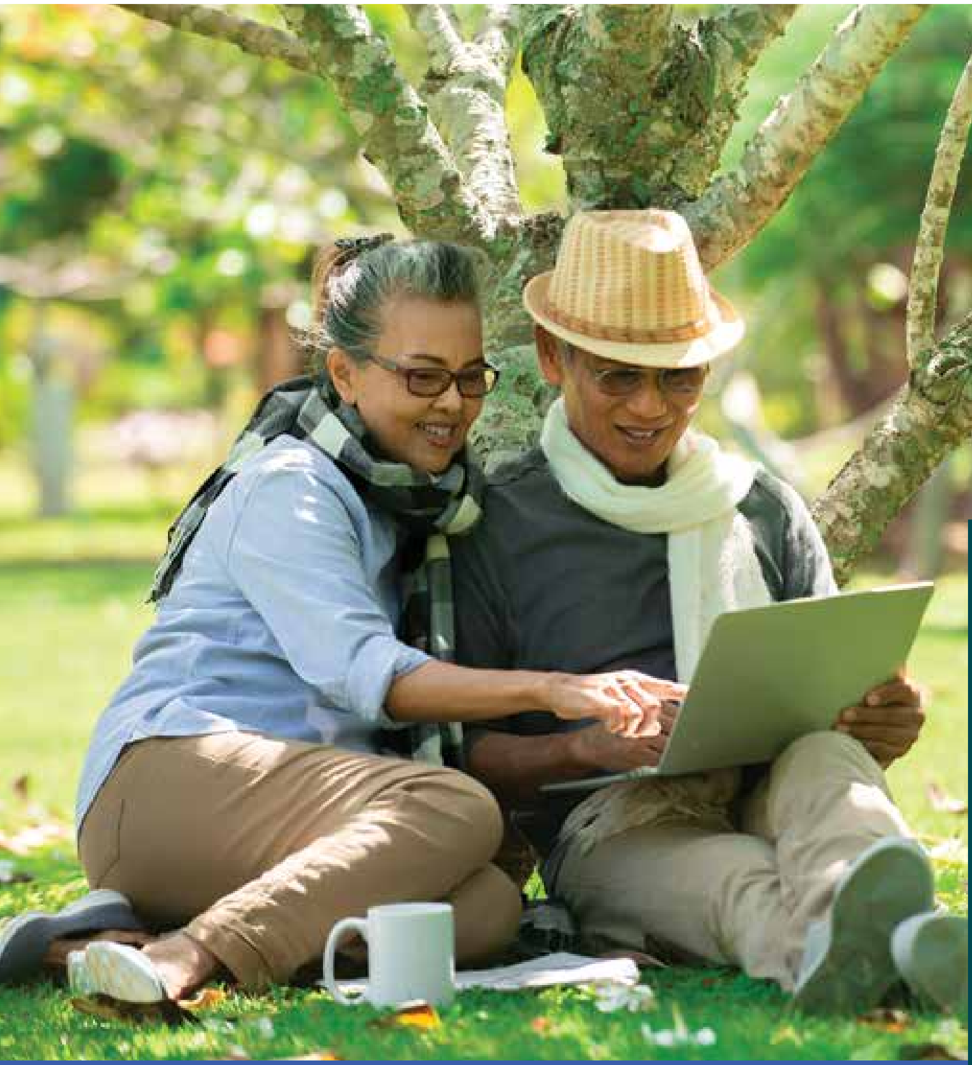
INSIGHT ON ESTATE PLANNING



SECURE 2.0 eases RMD obligations

Asset protection and your estate plan
Preserve and protect your wealth for your heirs

Are changes coming for the gift and estate tax exemption?

ESTATE PLANNING PITFALL
You've relocated out of the country without checking estate tax laws

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SECURE 2.0 eases RMD obligations

Generally, it's advantageous to keep funds in your retirement accounts for as long as possible. Indeed, the longer you refrain from withdrawing funds, the longer they have to continue tax-deferred growth.

However, you must begin taking required minimum distributions (RMDs) from employer-sponsored retirement plans, such as 401(k) plans, and IRAs when you reach a specific age. The good news is that the SECURE 2.0 Act, a follow-up to the Setting Every Community Up for Retirement Enhancement (SECURE) Act, can help you save more for retirement, which, in turn, may provide you more wealth to share with your loved ones.

Relief for Roth 401(k) plan owners

You don't have to take lifetime required minimum distributions (RMDs) from a Roth IRA, but this benefit wasn't previously available to Roth 401(k) plan participants. The SECURE 2.0 Act does away with this distinction. Under the new law, lifetime distributions from Roth 401(k)s are no longer mandatory.

However, this change doesn't take effect until 2024. Therefore, if you have a Roth 401(k) account and you've attained your required beginning date, you must take an RMD for the 2023 tax year.

Timing of RMDs

The amount of your RMDs depends on the value of your accounts on the last day of the prior year. For example, your RMDs for 2023 are based on your account balances as of December 31, 2022. The IRS has created tables for calculating RMDs, but you can also use an online calculator or have your financial advisor perform the calculations for you.

Be aware that RMDs are taxed at ordinary income tax rates. Currently, the top tax rate is 37%.

Previously, the required beginning date (RBD) for employer-sponsored plan participants or IRA owners was April 1 of the year following the year in which you turned age 70½. However, the SECURE Act pushed the RBD to age 72, beginning in 2020. Therefore, if you turned age 72 in 2022, you had to take RMDs from qualified plans and IRAs by April 1, 2023.

Keep in mind that the RMD rules continue to apply for each succeeding tax year with a deadline of the last day of the year. Accordingly, if your first RMD was for 2022, and you decided to wait until April 1, 2023, you'll have two RMDs for this year. That is, the RMD from 2022 that you deferred, plus your 2023 RMD, which has to be taken by December 31, 2023.

Looking ahead, if you've not yet reached your RBD, be sure to consider whether it'll be more advantageous to 1) take your first RMD in the year in which you reach your RBD, to avoid being taxed on two distributions in the following year, or 2) defer your first RMD, to take advantage of the one-time planning opportunity. Further, the decision for the first RMD is not an all-or-nothing proposition. You can take a portion of the RMD in the "regular" year and the rest by April 1 of the following year.

What happens if you fail to take RMDs in a timely fashion? The IRS may pile on a hefty tax penalty on top of the regular income tax that you already owe. Prior to the new law, the penalty was equal to 50% of the RMD amount (or the difference between this amount and any payment).

RMDs under SECURE 2.0

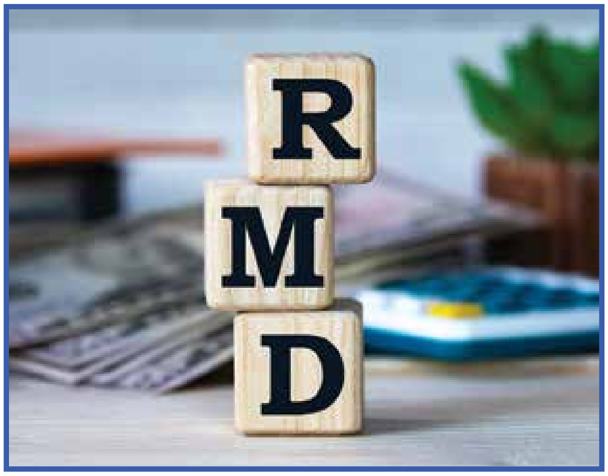
Not only does SECURE 2.0 postpone the RBD for some individuals, it reduces the penalty for failing to comply with the RMD rules. Under the new law, the RBD is increased to age 73, up from age 72 as required by the initial SECURE Act. This change is effective for the 2023 tax year. Thus, if you turn age 72 this year, you don't have to start taking RMDs until 2024, which means that you effectively have until April 1, 2025. However, if you already reached age 72 by the end of last year, you must continue taking RMDs in 2023.

SECURE 2.0 boosts the RBD even higher, all the way up to age 75, beginning in 2033. Barring subsequent legislation, individuals who turn 63 or less this year will qualify.

The new law also reduces the penalty for failure to take an RMD when due, from 50% to 25% of the amount you should've withdrawn. And the penalty is reduced further, to 10%, for taxpayers who correct a missed RMD on a timely basis. Fortunately, there are mechanisms to eliminate the penalties altogether, so if you find that you've missed a prior RMD, contact your tax advisor for details.

Other SECURE 2.0 provisions

In addition to rule changes regarding RMDs, SECURE 2.0 makes several other retirement savings improvements. For example, currently, if you're age 50 or older, you can make catch-up contributions of $1,000 per year to IRAs and $7,500 per year to most employer-sponsored plans (different limits apply to SIMPLE plans). Beginning in 2024, the



catch-up amount for IRAs, which has been stuck at $1,000 for years, will be adjusted for inflation.

Employer-plan participants also will soon be able to increase their catch-up contributions. Beginning in 2025, participants age 60 through 63 will be able to increase their contributions by the greater of $10,000 (adjusted for inflation) or 150% of the regular catch-up amount. Note, however, that highly compensated participants (those who earned more than an inflation-adjusted $150,000 in the previous year), will no longer be permitted to make catch-up contributions on a pretax basis. Starting in 2024, these contributions must be made to a Roth account.

Employer-matching contributions also get some improvements. Starting this year, plans may allow employees to receive matching contributions as after-tax Roth contributions. Also, plans can treat certain student loan payments as contributions for matching purposes.

Practical advice

Don't be caught napping on RMDs. If you're required to take RMDs before January 1, 2024, make the necessary arrangements to accommodate any possible glitches. Otherwise, thanks to SECURE 2.0, you can continue to accumulate earnings within your employer-sponsored retirement plan or IRA on a tax-deferred basis. •

Preserve and protect your wealth for your heirs

Asset protection is about preserving your hard-earned wealth in the face of unreasonable creditors' claims, frivolous lawsuits or financial predators. It's not about evading legitimate debts, hiding assets or defrauding creditors.

Thankfully, there are many asset protection strategies you can implement. If your business, professional or personal activities expose your assets to attack by unscrupulous litigants or creditors, consider incorporating these strategies into your estate plan.

Are your assets at risk?

The first step in creating an asset protection plan is to assess the risk that creditors, former spouses or opportunists will go after your assets or those of your beneficiaries. If your risk is relatively low, but you seek added peace of mind, you might consider simpler techniques, such as changing the way assets are titled or gifting them to your loved ones.

If your risk is higher — for example, if you own a business, are in a profession with a high degree of malpractice risk or are involved in other activities that expose you to potential financial liability — you might consider more sophisticated approaches.

What are your options?

When it comes to asset protection, there's a wide variety of techniques to consider. Here are several, from the simple to the complex:

Buy insurance. Insurance is an important line of defense against potential claims that can threaten your assets. Depending on your circumstances, it may include personal or homeowner's liability insurance, umbrella policies, errors and omissions insurance, or professional liability/malpractice insurance.

Give it away. If you're willing to part with ownership, a simple yet highly effective way to protect assets is to give them to your spouse, children or other family members, either outright or through an irrevocable trust. After all, litigants or creditors can't go after assets you don't own (provided the gift does not run afoul of fraudulent conveyance laws).

Choose the recipients carefully, however, to be sure you don't expose the assets to *their* creditors' claims.

Retitle assets. Another simple but effective technique is to retitle property. For example, the law in many states allows married couples to hold a residence or certain other property as "tenants by the entirety," which protects the property against either spouse's individual creditors. It doesn't, however, provide any protection from a couple's joint creditors.

Contribute to a retirement plan. You may be surprised to learn that maxing out your contributions to 401(k) plans and other qualified retirement plans doesn't just set aside wealth for retirement, it protects those assets from most creditors' claims as well. IRAs also offer limited protection: In the event of bankruptcy, they're protected against creditors' claims up to a specified amount (currently, about $1.5 million). Outside bankruptcy, the level of creditor protection depends on state law, which varies from state to state.

Establish a DAPT. A domestic asset protection trust (DAPT) can be an attractive vehicle because, although it's irrevocable, it provides you with creditor protection even if you're a discretionary beneficiary. DAPTs are permitted in around one-third of the states, but you don't necessarily have to live in one of those states to take advantage of a DAPT. However, you'll probably have to locate some or all of the trust assets in a DAPT state and retain a bank or trust company in that state to administer the trust. The amount of protection provided by a DAPT varies from state to state.

Choose the right strategies

Bear in mind that for these strategies to work, you must implement them at a time when there are no pending or threatened claims against you. Otherwise, you may run afoul of fraudulent conveyance laws. Before acting, contact your estate planning advisor. He or she can help you implement the right asset protection strategies for your specific situation. •

Are changes coming for the gift and estate tax exemption?

Under current estate tax law, taxpayers benefit from the most generous gift and estate tax regime in history. Indeed, in 2023, an individual can shield assets worth up to $12.92 million from federal gift and estate tax.

But the good times won't last forever, or at least they're not designed to. The increase in the exemption amount brought by the Tax Cuts and Jobs Act (TCJA) is scheduled to "sunset" after 2025, so changes could be coming soon. Even though the fate of the exemption amount is yet to be determined, it's best to be prepared for all possibilities.

Evolution of estate tax law

Generally, you can shelter your estate from federal estate tax through a combination of the unlimited marital deduction and the unified gift and estate tax exemption. As the name implies, the unlimited marital deduction covers transfers between spouses. The exemption applies to transfers to nonspousal beneficiaries.

With the enactment of the Economic Growth and Tax Relief Reconciliation Act (EGTRRA), the estate tax exemption amount gradually increased from $1 million in 2001 to $3.5 million in 2009, while reducing the top estate tax rate from 55% to 45%. It also severed the unified gift and estate tax systems, creating a lifetime gift tax exemption of $1 million. EGTRRA repealed the estate tax outright in 2010, but just for one year. The estate tax returned in full force in 2011.

Subsequently, under the Tax Relief Act of 2010, the exemption was boosted to $5 million (indexed for inflation), the top estate tax rate was lowered to 35%, and the gift and estate tax exemption was reunified. Furthermore, this law allowed "portability" of exemptions between spouses and restored favorable rules enabling beneficiaries to benefit from a "step-up in basis" on the value of inherited assets.

Next, the American Taxpayer Relief Act (ATRA) preserved the gift and estate tax exemption of $5 million with inflation indexing. It also made exemption portability permanent. At the same time, ATRA bumped up the top federal estate tax rate from 35% to 40%, where it currently remains.

At long last, the TCJA doubled the estate tax exemption to $10 million with inflation indexing. But is the other shoe about to drop?

Planning for after the sunset

Barring further legislation, the $10 million exemption is scheduled to revert to $5 million, with inflation indexing, after 2025. Of course, a lot can happen between now and the beginning of 2026.

From a political perspective, it may be difficult for either of the two political parties to support such a significant reduction. Indeed, the conventional wisdom is that the existing exemption is likely to be extended or modified to provide a more generous exemption than $5 million.

In the meantime, the worst-case scenario can be factored into your current estate plan. Primarily, your estate planning documents, including your will, should include language that maximizes the applicable gift and estate tax exemption amount at the time of death.

Barring further legislation, the $10 million exemption is scheduled to revert to $5 million, with inflation indexing, after 2025.

Also, consider making lifetime gifts. For example, you can begin a series of gifts that qualify for the annual gift tax exclusion. For 2023, you can give each recipient up to $17,000 without paying gift tax or eroding your gift and estate tax exemption.

Similarly, you can contribute to a Section 529 plan that can be used to pay for higher education expenses of your children or grandchildren. Further, for 529 plans you have the opportunity to "front-load" five years ($85,0000 at the current amount, or $170,000 for a married couple) of annual exclusions.

Planning for the future

The sunset date of the gift and estate exemption amount is still a few years away. The hope is that Congress will act sooner rather than later to quell uncertainty regarding the exemption's future. Your estate planning advisor will continue to keep you updated on any new developments that should be factored into your estate plan. •

ESTATE PLANNING PITFALL

You've relocated out of the country without checking estate tax laws

Are you thinking about moving abroad after you retire? If so, don't forget to consider your destination country's estate tax laws.

For starters, if you remain a U.S. citizen, know that your estate is still subject to the same estate tax laws that apply to citizens residing in the United States. The bulk of your taxable estate, or all of it, may be covered by the gift and estate tax exemption ($12.92 million in 2023).

If you're no longer a U.S. citizen upon death, it's a different story. The taxable estate for deceased nonresidents generally includes U.S.-situated assets such as real estate located in the United States, tangible personal property and stock in U.S. companies.

Also, be aware that the estate tax exemption is only $60,000. Furthermore, the exemption is available only at death and your estate may also be liable for a generation-skipping transfer (GST) tax.

The GST tax is imposed in addition to gift and estate tax on U.S. taxable gifts and bequests made to a beneficiary two or more generations younger than you. Thus, if you're leaving U.S.-situated property to grandchildren, there may be GST tax liability.

Note that estate tax treaties between the United States and other countries often provide more favorable tax treatment to non-residents by limiting the types of assets subject to U.S. estate tax. Investigate the laws in the country where you'll be domiciled.

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