January 3, 2020

The SECURE Act: Impact on IRAs and other Retirement Plans and on Estate, Elder Law and Special Needs Planning

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On December 20, 2019 President Trump signed the Setting Every Community Up for Retirement Enhancement Act of 2019, now commonly referred to as the "SECURE Act." Among other things, the SECURE Act, makes significant changes to how IRAs and certain qualified retirement benefits including 401(k) plans must be treated at the death of the IRA owner or 401(k) plan participant. The most discussed change is the elimination of the "stretch" required minimum distribution from an IRA account or 401(k) plan that is inherited by a beneficiary.

Prior to the SECURE Act, many individuals utilized the "stretch" as a common planning technique. The stretch permitted a beneficiary of an inherited IRA or 401(k) to receive minimum distributions based upon the beneficiary's life expectancy. Accordingly, when IRAs or 401(k)s pass to beneficiaries younger than the IRA owner or plan participant (e.g. to a grandchild), the distributions could be paid out over the life expectancy of the beneficiary. Historically, this would defer income taxation on distributions and maximize continued tax-deferred growth on IRA or 401(k) account balances during the "stretch" period.

Now, beginning January 1, most beneficiaries of inherited IRAs or 401(k)s will no longer be able to stretch distributions over their life expectancy and will be required to withdraw the entire account balance within 10 years of the death of the IRA owner or 401(k) participant. However, certain "eligible designated beneficiaries" will be exempt from this 10-year distribution rule including (i) surviving spouses, (ii) chronically ill heirs, (iii) disabled heirs, and (iv) minor children [until reaching the age of majority, whereupon the account balance must be distributed over the succeeding 10 years]. These eligible designated beneficiaries, together with any beneficiary that inherited an IRA or 401(k) prior to January 1, will retain the right to have required minimum distributions paid over life expectancy.

At the same time, the SECURE Act includes some taxpayer friendly changes. For example, the age at which an IRA owner must begin taking required minimum distributions is extended from 70 ½ to 72; contributions to IRAs are no longer age restricted; and IRA withdrawals up to $5,000 are permitted without penalty to pay expenses for the birth or adoption of a child.

Noteworthy is that about 65% of Americans save for retirement through IRAs or 401(k)s and will be impacted by SECURE Act changes. Without implementing a proper estate, elder law, or special needs plan or revisiting an existing plan, the SECURE Act could significantly limit the amount of retirement savings that a person can pass-on to beneficiaries, protect from health and long-term custodial care costs, or shelter from creditor claims. For these reasons, IRA owners and 401(k) participants should consult with their estate, elder law and special needs planning attorney or other wealth management professional to revisit and review their estate, elder law, or special needs plans. This is of particular importance for those who have incorporated trusts into their plans as beneficiary of an IRA account or 401(k) plan.

If you have any questions or require additional information, please contact any member of Schenck Price's Tax Trusts and Estates Practice Group: Gary Mazart, Regina M. Spielberg, Farah N. Ansari, Douglas R. Eisenberg, Meredith L. Grocott, Basil F. O'Connor, Shirley B. Whitenack, Lauren I. Mechaly, Wynne A. Whitman, or Jordan M. Wassel.

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