Planning Under the SECURE Act

By
Robert W. Baird & Co.
Private Wealth Management

I. Retirement Plan Changes

- a. RMD Age Change to 72
  - i. RMD Age: "Required Minimum Distribution" age, the age at which the plan participant must start taking the minimum distributions.
  - ii. Now age 72 (previously 70 ½)
    1. Applies beginning with retirement account owners who will reach age 70½ on or after January 1, 2020.
       - a. i.e., if the owner turned 70½ prior to January 1, 2020, he or she must continue to take RMDs and cannot delay them until age 72.
  - iii. "Required Beginning Date" (RBD)
    1. Pre-SECURE Act: April 1st of the year after the IRA owner attains age 70 ½.
    2. Post-SECURE Act: April 1st of the year after the IRA owner attains age 72.
- b. Changes to Stretch Out Option for Beneficiaries
  - i. Ten Year Payout
    1. Eliminated the lifetime "stretch" option for many categories of beneficiaries inheriting IRAs and other qualified retirement plans.
    2. Unless the beneficiary falls into one of the exemption categories (defined as an Eligible Designated Beneficiary), all amounts allocated to the beneficiary must be distributed within 10 years
       - a. Specifically, by December 31st of the year that contains the 10th anniversary of the date of the participant's death.
  - ii. Eligible Designated Beneficiary (EDB)
    1. Surviving Spouse
       - a. Defined under 401(a)(9)(E)(ii)(I).
       - b. Surviving spouse can still rollover an IRA to their own account.
       - c. Surviving spouse can use the life expectancy payout.
       - d. Same special payout rules as before: life expectancy recalculated annually, with annual distributions beginning the later of the year after the year of the participant's death or the year the participant would have reached age 72.
       - e. On death the exception ceases to apply and a 10-year payout applies.
    2. Disabled Individual
       - a. The life expectancy payout applies to a designated beneficiary who is disabled within the meaning of § 72(m)(7).
       - b. Upon his/her death the 10-year payout rule kicks in.

3. Chronically Ill Individual
    a. The life expectancy payout applies to a designated beneficiary who is chronically ill within the meaning of § 7702B(c)(2), except that the requirements thereof shall only be treated as met if there is a certification that, as of such date, the period of inability described with respect to the individual is an indefinite one which is reasonably expected to be lengthy in nature.
    b. Upon his/her death the 10-year payout rule kicks in.
4. Minor Child
    a. The life expectancy payout applies to a "child of the employee who has not reached majority" within the meaning of 401(a)(9)(E)(ii)(II) and 401(a)(9)(F).
    b. Upon reaching majority, the 10-year rule kicks in.
5. Beneficiary Less than Ten Years Younger than the Participant
    a. The life expectancy payout applies to an individual who is not more than 10 years younger than the participant.
    b. Upon his or her death, the 10-year payout rule kicks in.

iii. Designated Beneficiary (DB)
1. Individuals
2. See-through Trusts
3. RMDs are no longer mandatory on an annual basis during the 10-year period, but the entire account must be distributed to the beneficiary within the ten-year period after the decedent's death.

iv. Non-Designated Beneficiary (Non-DB)
1. All other beneficiaries:
    a. Participant's estate;
    b. Charity; or
    c. Trust that does <u>not</u> qualify as a see-through trust.
2. All Non-DBs restricted to 5-year payout (if participant died prior to RBD), or the life expectancy of the participant (if participant died after RBD).

c. Trust as Beneficiary

i. See-through requirement unchanged: Trust must be meet the four tests required under IRC §1.401(a)(9)-4, A-5(b):
1. The Trust is valid under State Law;
2. The Trust is irrevocable by its terms at the death of the grantor;
3. All of the beneficiaries are "identifiable from the trust instrument" and
4. Plan Administrator must be supplied with a complete copy of the trust instrument, including amendments, prior to October 31st of the year after the decedent passed away.

ii. Trust is either Conduit or Accumulation:
    1. Conduit Trust: Trust mandates that RMDs be paid outright to the current Trust beneficiary and may not be accumulated by the Trust.
    2. Accumulation Trust: RMDs may be accumulated by the Trust and are not required to be distributed to the current trust beneficiaries, all beneficiaries who might ever be entitled to receive such accumulations are considered beneficiaries of the retirement plan for purposes of applying the minimum distribution rules, and all such beneficiaries identified must be DBs for Trust to qualify as see-through.

iii. If Trust qualifies as DB, then underlying Trust beneficiary's applicable payout term applies
    1. I.e., if Trust is for the benefit of a spouse (an EDB), then the spouse will have lifetime payout; if Trust is for the benefit an adult child (a DB) then the 10-year rule applies.

d. Planning Considerations
   i. Review all Beneficiary Designations
      1. If a Trust is named as beneficiary, review to see if Trust will need to be amended to accommodate new rules
      2. Consider the net amount received by the beneficiary after applicable income taxes in the context of the entire estate plan
   ii. Consider Tax Efficiency when Naming IRA Beneficiaries
      1. Charities: estate tax charitable deduction, charity pays no income tax and thus receives dollar for dollar amount
      2. Spouses vs. Children: Stretch payout available for spouse, adult child likely 10-year payout.
         a. Disclaimer planning opportunities

II. <u>Charitable Planning Changes</u>

a. Private Foundations Subject to 1.39% Excise Tax on Net Investment Income (NII)
   i. Effective for tax years beginning after Dec. 20, 2019, Section 4940(a) was amended to provide a single tax rate of 1.39% on net investment income.
   ii. For tax years beginning after Dec. 20, 2019, all private foundations subject to the Section 4940 excise tax on net investment income will calculate the tax using the 1.39% rate.
b. Qualified Charitable Distribution (QCD) Updates
   i. The maximum annual amount that can qualify for a QCD is $100,000
      1. Amount is further reduced by the amount of post-age-70½ deductible IRA contributions.
   ii. Age Remains at 70 ½
      1. After age 70 ½, can use RMDs to make qualified charitable contributions to operating public charities, up to $100,000 a year.
   iii. The QCD counts toward the account holder's annual RMD

1. RMD is not included in AGI and can help keep AGI within planned ranges.
2. Not an itemized charitable deduction, may still be able to take standard deduction if appropriate.

c. Planning Considerations
   i. Outright to Public Charity: DAF, CRT, Foundations do not qualify as QCDs
   ii. QCD to Designated Fund
      1. Can make QCD to Designated Fund.
      2. Similar to a DAF but has several restrictions:
         a. Can only grant to one designated charitable organization, named on the application by the donor and the charitable organization cannot be changed.
         b. Can only be funded from an IRA.
         c. Required to grant each year.
         d. No Successor Advisors or customizable Disposition Plans.
   iii. Charitable Remainder Trust as Beneficiary of Plan
      1. Allows for charitable giving and income tax savings while providing beneficiaries a certain annuity stream.

III. <u>Baird's Response</u>

a. QCD Reporting
   i. Allows for proper tax reporting of QCDs
   ii. Baird will prepare and provide 1099Rs for a QCD
   iii. QCD notice email
      1. Provides client with all relevant information to forward to his or her tax preparer

b. IRA Beneficiary Distribution List
   i. Baird produces reports for each advisor on the IRA beneficiary designations of their clients.
   ii. The reports are reviewed annually to ensure the named beneficiaries are appropriate and allows the advisor to confirm the beneficiary designations are in-line with the client's greater planning.
   iii. Non-legally binding interpretation of Trusts as Beneficiary
   iv. Collaboration with client's Estate Planning Attorney during lifetime to design beneficiary designation and at death for the most efficient outcome for the client

c. Addressing Upcoming Changes in Life Expectance Tables
   i. The IRS has published new actuarial/life expectancy tables to be used for determining RMDs for 2021 and later years.
   ii. New Tables should have the effect of lowering RMDs.
   iii. Baird has a working group that is taking holistic view of how this will impact the firm, creating educational content and packaging communications for Advisory Teams and their clients.

IV. Legal Disclaimer

a. Robert W. Baird & Co. does not provide tax or legal advice

b. Robert W. Baird & Co. does not make legal determinations