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IRS Delays SECURE 2.0 Roth Catch-Up Requirement

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Among the most challenging components of the SECURE 2.0 Act of 2022 (SECURE 2.0) for plan sponsors is a requirement that any catch-up contributions for high wage earners can only be made on a Roth (after-tax) basis beginning January 1, 2024. (Catch-up contributions are additional deferrals available to participants who will be at least age 50 by the end of a calendar year.)

In view of the administrative difficulties in implementing this provision, including changes to payroll systems, industry groups have requested that Congress and/or the IRS and Treasury delay the effective date of this requirement. On Friday, the IRS and Treasury answered their pleas by issuing transitional guidance (Notice 2023-62) delaying implementation of this key SECURE 2.0 Act rule by two years.

SECURE 2.0 Roth Catch-Up Rule

SECURE 2.0 requires that all catch-up contributions by qualifying participants be made on a Roth basis effective with the first taxable year beginning after December 31, 2023. Qualifying participants are those whose wages (generally determined the same way as for purposes of computing FICA/social security taxes) for the preceding calendar year from the employer sponsoring the plan exceed $145,000 (adjusted annually for inflation).

To comply with this requirement, any 401(k) plan, 403(b) plan, or 457(b) plan that does not already provide for Roth contributions may need to be amended to permit Roth contributions if the plan has any qualifying participants who are eligible for catch-up contributions.

Administrative Transition Period

Under the new guidance, the effective date of the Roth catch-up rule will be delayed until the first taxable year beginning after December 31, 2025. Specifically, the IRS announced that during this two-year "administrative transition period", catch-up contributions may be made on a pre-tax basis by participants whose wages exceed the $145,000 threshold, and plans that do not permit Roth contributions can continue to allow catch-up contributions to be made only on a pre-tax basis.

Drafting Errors

Some commentators have noted that certain SECURE 2.0 provisions could be read to provide that catch-up contributions are no longer permitted starting in 2024 or to have other unintended effects on the tax treatment and limitations that apply to catch-up contributions. The IRS has confirmed that catch-up contributions remain available on both a Roth and non-Roth basis, that they will retain the same tax treatment that they had prior to SECURE 2.0's passage, and that the application of aggregate limitations remains unchanged where an employee participates in multiple plans maintained by unrelated employers.

Comments & Additional Guidance

The IRS expects to issue further guidance clarifying:

- Because the Roth catch-up rule is based on wages for FICA/social security purposes, participants

without any wages (*e.g.*, participants who are self-employed, such as partners) would not be subject to the Roth catch-up rules.

- Plan sponsors will be permitted to treat an employee election to contribute pre-tax catch-up contributions as an election to contribute Roth catch-up contributions to the extent that non-Roth contributions are impermissible under the SECURE 2.0 Act.
- In a multiple employer plan context, wages from one participating employer would not be aggregated with wages from another participating employer in applying the Roth catch-up rule.

In addition to the topics discussed above, the IRS has requested comments on how the new rule should apply to plans that presently do not have a Roth feature at all. In particular, the IRS requested comment on whether such plans should be permitted to make catch-up contributions available only to participants who are below the $145,000 threshold.

Notice 2023-62 does not address SECURE 2.0's rules allowing for increased catch-up contributions for employees ages 60 to 63 after December 31, 2024.