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Transition Relief for Certain RMDs before 2023

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The IRS has published transitional relief in Notice 2022-53 (the "Notice") for required minimum distributions ("RMDs") to certain beneficiaries who may not have anticipated the IRS's interpretation of the RMD rules announced in proposed RMD regulations released in February 2022. The Notice also announces that final RMD regulations will not be effective before 2023.

Background

The RMD rules generally govern when a participant or beneficiary must take distributions from a retirement account, both during the life of the employee and after the death of the employee. These RMD rules apply to 401(k) plans and, by reference, to other types of plans and Individual Retirement Accounts ("IRAs").

The Setting Every Community Up for Retirement Act of 2019 ("Secure Act") changed the RMD rules to prevent the so-called "stretch" retirement accounts for beneficiaries and IRA-owners. Before the Secure Act, if an employee died after reaching his or her required beginning date, individual beneficiaries (and certain types of trusts) were generally able to continue to take RMDs "at least as rapidly" as distributions would have been paid to the employee, or based on the beneficiary's life expectancy, if longer. The Secure Act changed the RMD rules to allow a stretch retirement account only for an "Eligible Designated Beneficiary" (which includes a surviving spouse, a child under age 21, disabled or chronically ill individual, or an individual who is not more than 10 years younger than the employee). Put differently, under the Secure Act, an individual beneficiary who is not an Eligible Designated Beneficiary must distribute the entire retirement account within 10 years of the anniversary of the participant's death ("10-Year Rule").

One controversial issue is whether the Secure Act's imposition of the 10-Year Rule applies in addition to the "at least as rapidly" rule, which provides that if the participant dies after the participant's required beginning date for taking RMDs, then the RMDs for years after the participant's death must be based on the longer of the beneficiary's life expectancy or the participant's life expectancy. Although many had hoped that the 10-Year Rule would apply *instead of* and not *in addition to* the "at least as rapidly" rules, the IRS did not agree with this interpretation. Thus, based on the proposed regulations released by the IRS earlier this year, RMD payments must continue to be paid out in each of the 10 years following the death of a participant or IRA owner under the "at least as rapidly rule" *and* the 10-Year Rule would apply. Many plan sponsors, financial institutions, employees and beneficiaries were not expecting this IRS interpretation. And because the proposed regulations were released in February 2022, many had not taken out RMDs for 2020 or 2021 under the assumption that they would only need to receive distributions under the 10-Year Rule but would not need to receive distributions each year under the "at least as rapidly" rule.

Transition Relief

Notice 2022-53 provides two significant transition benefits for plan sponsors, participants, beneficiaries and IRA owners. First, Notice 2022-53 provides that the proposed regulations (which, as noted above,

included the interpretation that the "at least as rapidly" rules would apply in addition to the 10-Year Rule) would apply no earlier than the 2023 distribution calendar year. This delayed timing should give plan sponsors, participants, beneficiaries, and IRA owners more time to prepare for the IRS interpretation in the proposed regulation.

Second, Notice 2022-53 provides that if a taxpayer did not take a "specified RMD" in 2021 or 2022, then the IRS will not assert a 50% excise tax penalty under Code Section 4974. The Notice also provides that a taxpayer may request a refund for the excise tax if the taxpayer had already paid an excise tax for a missed RMD in 2021 that constitutes a specified RMD. The relief in this Notice does not cover RMDs in 2020 because the CARES Act waived the RMD for employees and beneficiaries for that year.

The Notice defines a "specified RMD" as any distribution that would have been required to be made under the RMD rules and for which the 10-Year Rule would apply if that payment would be required to be made to either:

- a designated beneficiary of an employee under the plan (or IRA owner) if: (1) the employee (or IRA owner) died in 2020 or 2021 and on or after the employee's (or IRA owner's) required beginning date, and (2) the designated beneficiary is not taking lifetime or life expectancy payments pursuant to Code Section 401(a)(9)(B)(iii); or
- a beneficiary of an eligible designated beneficiary (including a designated beneficiary who is treated as an eligible designated beneficiary pursuant to section 401(b)(5) of the SECURE Act) if: (1) the eligible designated beneficiary died in 2020 or 2021, and (2) that eligible designated beneficiary was taking lifetime or life expectancy payments pursuant to Code Section 401(a)(9)(B)(iii).

Overall, this Notice 2022-53 provides excellent transition relief for the plan sponsors, plan participants, beneficiaries and IRA owners who were unprepared for the interpretation in the RMD proposed regulations. The IRS previously announced in Notice 2022-33 that it extended plan amendment deadlines for changes under the Secure Act and CARES Act for many plans until December 31, 2025, so the operational issue of how to determine RMDs in 2021 and 2022 was the most pressing issue related to Secure Act implementation.

On the other hand, this Notice also signals the IRS intent that the final regulations will also provide an interpretation that the "at least as rapidly" rules apply in addition to the 10-Year Rule. Plan sponsors, participants, beneficiaries and IRA owners will need to be prepared to comply with the provisions in the proposed regulations starting in the 2023 distribution year as it does not seem like the IRS will offer additional transitional relief for these RMDs in the 2023 plan year.