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SECURE 2.0: Catch-up Changes and After-Tax Employer Contributions

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SECURE 2.0 (which we previously summarized on this blog) makes a number of important changes to catch-up and after-tax contributions in tax-qualified plans (including 401(k), 403(b), and governmental 457(b) plans, collectively, "Plans"):

- Starting immediately, Plans can allow participants to elect to treat all or a portion of fully vested employer matching and nonelective contributions as Roth (after-tax) contributions.
- Starting in 2024, participants with prior year wages of at least $145,000 (adjusted for inflation) can make catch-up contributions only on a Roth basis.
- Starting in 2025, participants ages 60-63 can make additional catch-up contributions, above the catch-up contributions already available to participants age 50 or older.

Plan Sponsors will need to evaluate carefully how these changes affect their Plans. Although these changes may bring more opportunity and flexibility to participants, they may also bring challenges to the administration of catch-up and Roth contributions that did not exist before SECURE 2.0. Plan Sponsors must balance these benefits with the burden of administering new and complex provisions. More than ever, Plan Sponsors will need to evaluate and communicate plan design choices to participants who may be unaware or confused by these new rules.

Changes to Catch-Up Contributions

Catch-up contributions are aimed to help people nearing retirement who may be behind on their retirement savings goals and need a boost to help them catch up. Before SECURE 2.0, the catch-up contribution limit was fairly straightforward: participants at least 50 years old were allowed to make an additional contribution to the Plan in addition to the elective deferral limits available to all participants. For example, if a 401(k) Plan allowed catch-up contributions in 2022, then a participant who was age 55 could contribute $20,500 in elective deferrals and make an additional catch-up contribution of $6,500 (for a total of $27,000).

SECURE 2.0 makes two very important changes to catch-up contributions:

Only After-Tax Catch-up Contributions for High-Paid Participants: For tax years beginning after December 31, 2023, catch-up contributions for participants with prior year wages from the Plan Sponsor of at least $145,000, adjusted for inflation ("High-Paid Participants"), can only be made as "Roth" after-tax contributions.

Higher Limits for Participants Ages 60-63: For tax years beginning after December 31, 2024, higher catch-up contribution limits apply to participants who attain ages 60, 61, 62, or 63 during the year. (The higher catch-up contribution limits do not apply to participants who attain ages 64 or older

during the tax year, although these older employees may have the greatest need of increasing their retirement savings.) Starting in tax years after December 31, 2024, this group of participants may make catch-up contributions during the calendar year up to the greater of $10,000 or 150% of the regular catch-up contribution amount, adjusted for inflation. For 2023, 150% of the regular catch-up contribution limit ($7,500) is $11,250, so the increased catch-up contribution limit for 2024 will be in excess of $10,000.

SECURE 2.0 changes to the catch-up rules raise several issues for Plan Sponsors:

Roth Contribution Feature: The catch-up contribution rules will require Plans to offer Roth catch-up contributions if any participant eligible for a catch-up contribution is a High-Paid participant. Accordingly, Plans that do not currently have a Roth contribution feature but allow catch-up contributions must add Roth contribution feature before 2024. That said, absent IRS guidance, it is unclear whether a Plan may require all catch-up contributions to be made on a Roth basis to make this provision easier to administer.

Tracking wages. The identification of High-Paid Participants for purposes of after-tax catch-up contributions is different than the identification of highly compensated employees (HCEs) for purposes of coverage and nondiscrimination testing. The new Roth catch-up contribution requirements are based on wages for FICA purposes, which may be different than compensation definitions used for other Plan purposes. Plan Sponsors may consider reviewing and coordinating definitions of compensation for purposes of the Plan. It is important to make sure all parties administering the Plan understand the differences to prevent operational errors.

Partners and Self-Employed Individuals. The catch-up rules for High-Paid Participants refers to FICA wages, which does not apply to partners or self-employed individuals unless the statute is amended in technical corrections or the IRS and Treasury Department believe they have the regulatory authority to extend the rules to these individuals.

Participant Communications. If Plan Sponsors provide catch-up contributions, they should provide clear communications to participants about who is eligible for the additional catch-up contributions, in what years, and whether they are available on a pre-tax or Roth basis. Without clear guidance, participants may be confused by the various limits and may not understand the benefits of the catch-up contributions against all of this added complexity.

Lastly, there is some uncertainty because of a technical glitch in the statute. It appears that Congress inadvertently repealed Section 402(g)(1)(C), which provides the statutory mechanism for catch-up contributions on a pre-tax basis, instead of modifying this provision to allow for the changes described above. If Congress does not pass a technical corrections bill, it is uncertain at this time to what extent the IRS and Treasury Department can use their regulatory authority to correct the glitch.

Roth Employer Contributions

Effective upon enactment, SECURE 2.0 allows employees to elect to receive vested matching and nonelective employer contributions on a Roth basis. But this is not as fundamental a change as it may first appear. The American Taxpayer Relief Act of 2012 previously permitted participants to elect to convert any of their vested account balances (including matching and non-elective contributions) into a Roth account under a Roth in-plan conversion feature, if offered by the Plan. Accordingly, this SECURE 2.0 provision is really a change in procedure, allowing for matching and employer contributions to be made on a Roth basis in one step rather than two steps (first as a pre-tax contribution, and second

through an in-plan conversion).

Nevertheless, participants still benefit from the SECURE 2.0 change. Administratively, it may be easier for participants to elect to receive matching and nonelective contributions on a Roth basis rather than electing conversions after the contributions are made. Further, because Roth in-plan conversion features may restrict the frequency in which vested accounts can be converted to Roth accounts, participants might have more flexibility with this change.

Plan Sponsors should note the following:

Optional Feature. As with Roth in-plan conversion features, participants may elect to have employer contributions made on a Roth basis only if this feature is offered by the Plan. However, Plan Sponsors are more likely to offer a Roth arrangement because of the SECURE 2.0 changes to catch-up contributions for High-Paid Participants described above.

Income Tax Treatment. Any Roth employer contributions will be subject to income tax at the time contributed. Employer contributions to a Plan are not considered "wages" subject to income tax withholding. IRS and Treasury Department may clarify in future guidance whether Roth employer contributions are also not subject to income tax withholding and reported on a Form 1099-R rather than a Form W-2. Depending on the position that the IRS and the Treasury Department take in future guidance, participants may need to adjust their wage withholding amounts or make estimated tax payments to avoid underpayment penalties, as they currently have to do with Roth in-plan conversions.

Vesting Issues. Plan Sponsors should consider the impact of the Plan's vesting schedules on Roth employer contributions. For example, participants who are only partially vested under a graded vesting schedule may be able to have a portion of their employer contributions made on a Roth basis, which may present administrative issues.

Participant Communications. As with the catch-up contribution changes, Plan Sponsors will need to carefully communicate these changes to employees if this feature is added to a Plan.

Plan Sponsors may consider whether to wait to implement Roth employer contributions until the IRS releases more guidance, especially given that most of the benefits of Roth employer contributions can be achieved by offering a Roth in-plan conversion feature.