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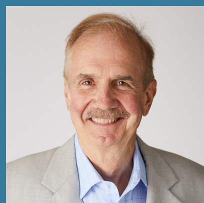

Dana Consulting Group, Ltd. and Jennings Law Firm, Ltd. were established to provide employers with a single source of comprehensive legal and consulting services relating to retirement plan and employee benefit matters.

PRESIDENT BIDEN WOULD END 401(K) TAX BREAKS

If elected, President Biden supports ending tax breaks associated with 401(k) plans. Laid out in a document entitled "Guaranteeing a Secure and Dignified Retirement" the proposal would replace the upfront tax advantage with a backend "credit" or match. The document says the current system "disproportionately accrue[s] to relatively higher earners ... and [his proposal would] provide benefits in equal measure to all income groups."

The document cites Ben Harris, a Biden advisor who also served as his chief economist during the Obama Administration. Mr. Harris has been raising this idea for quite a while. To Mr. Harris, many employees pay no income taxes and, therefore, receive no tax benefit from "putting a dollar in the 401(k)."

Our Comment: What really needs to be understood here is the way the annual federal budget process works. Tax benefits such as 401(k) contributions only count for the next ten years in the budgeting process. So even though those same 401(k) contributions will be taxed when withdrawn (presumably way in the future) those delayed income taxes are ignored unless they will be received in the next ten years. So, Mr. Biden will get higher income taxes now but be able to "ignore" receipt of the income taxes to the extent they will be received more than ten years out. Additionally, this is not the first time Congress has done this, particularly with retirement plan contributions.

We try and avoid politics in this newsletter unless it directly threatens a retirement system that allows significant numbers of working Americans to save for their retirement. We invite our readers to re-read our June newsletter (on our website

If you know someone who would like to receive *the dana report*, click the link below.

under the Education Center tab) and the two articles: "Pandemic To Force Millions Of Retirees Into Poverty", and "Is There A Retirement Plan Crisis?" In the first article, Teresa Ghilarducci of the New School Retirement Equity Act advocates for replacing the existing private retirement system with a government-run universal pension system. In the second article, Andrew Briggs, a former deputy commissioner in the Social Security Administration, points out that the current SS system is broken and questions why anybody would want to replace the current private pension system with another government-run program.

IS NOW A GOOD TIME TO MAKE A ROTH CONVERSION?

For anyone who has been considering converting a retirement account (including IRA) to a Roth account, this could be the time to act. There are several compelling reasons to suggest this is the right time; eg, asset values are down and individuals may be in a lower tax bracket in 2020.

There has been a common wisdom that individuals will be in a lower tax bracket after retirement. Many of my clients have substantial retirement accounts and RMDs alone will push them into higher brackets, particularly with the RMD age increased to 72. Also, tax rates are at historic lows. Depending on who wins in November, and controls Congress, tax rates could increase, at least in the short term. Investors are familiar with the concept of investment diversification. But what about tax diversification? Diversifying between pre-tax and tax-free (with upfront taxes) hedges against whatever Congress decides to do.

A paper by the Employee Benefit Research Institute (EBRI) concludes there is considerably little sophistication in the marketplace when it comes to efficiently coordinating between withdrawing tax-deferred versus pre-taxed assets among US retirees. For example, the RMD rules are different between pre-tax and Roth IRA accounts. An individual's CPA is sometimes needed to make the tax analysis, not the financial advisor.

Advisors, both CPAs and financial advisors, can take this opportunity to educate their clients about their options and how to make the right choice.

AICPA ISSUES GUIDANCE ON ACCOUNTING FOR PPP LOANS

The AICPA, the trade association of CPAs, has issued a set of technical Q&As for companies to use to account for the receipt of, and hopefully forgiveness of, Payroll Protection Program Loans.

The Q&As provide that the borrowing business:

- Would initially book receipt of the loan as a liability and accrue interest.
- Would not impute additional interest at a market rate.
- Would continue to show the loan as a liability until the loan is legally forgiven or repaid.
- On forgiveness of the loan, the borrowing business will reduce the liability on its books and record a gain.

This is likely a different treatment for income tax purposes since the IRS has already stated its view that forgiveness of a PPP loan will not constitute taxable income BUT the corresponding wages paid with the loan will not be deductible.

Businesses that secured PPP loans and intend to qualify for forgiveness, complete or partial, should consult with their CPAs.

SUPREME COURT LIMITS FIDUCIARY LAWSUITS INVOLVING DEFINED BENEFIT PLANS

In a 5-4 decision the US Supreme Court slammed the door on a wide range of fiduciary lawsuits involving defined benefit (DB) plans (and cash balance plans). The Court said participants cannot sue DB plan fiduciaries for mismanaging the plan's assets unless they can show actual harm, such as not receiving all of their promised benefits. The case is James J. Thole v US Bank NA et al.

The basis of the decision is that the plaintiffs had no standing to bring the lawsuit since they had not been directly harmed by the trustees' investment decisions. DB plans, and cash balance plans for that matter, promise to pay a particular retirement benefit and that benefit does not fluctuate with the value of the plan's assets. Since the plaintiffs' retirement benefits would not change whether they won or lost the lawsuit, they have no real stake in the outcome.

Our Comment: We understand the Court's reasoning, but put another way is the Court saying, "Come back once the investments have all gone to hell?" The PBGC is running a massive deficit since it does not have the assets to pay all of the claims related to bankrupt DB plans. A DB plan does not go bust in a day, it takes awhile. Take a look at the Illinois public pension system. It only has sufficient assets to pay about 25% of promised benefits BUT it is paying benefits now. But unless the state funds these plans (highly unlikely), they likely will go bust eventually. If those public pension plans were DB plans maintained in the private sector, would the Court tell the participants to come back once they do go bust.

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