SECURE 2.0 Act of 2022: A rare jewel of a sequel

In late 2019, Congress passed the original **Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE)**, which made major changes to the rules concerning retirement accounts. In late 2022, Congress passed a sequel to SECURE with SECURE 2.0 Act of 2022 (SECURE 2.0), with the goal of providing even more opportunities for retirement savers. In doing so, Congress accomplished what few movie producers have succeeded in doing — creating a better sequel.

SECURE 2.0 touches on some of the same topics as the original and adds numerous other changes to the tax code, some with future effective dates. Outlined below are some of the major changes starting with a summary of one of the biggest changes made by SECURE that was left unchanged by SECURE 2.0.

Inherited IRAs: No change to 10-year distribution rule for inherited IRAs created by SECURE

Starting in 2020, SECURE imposed a new 10-year distribution rule for certain beneficiaries of inherited IRAs which eliminated the previously available "lifetime stretch" for non-spouse beneficiaries. SECURE 2.0 did not change that 10-year distribution rule.

The IRS has not issued final regulations as to whether the 10-year distribution rule means the inherited IRA money can all be distributed at the end of the tenth year following the year of the account owner's death, or instead requires RMDs every year during such period. The IRS's proposed regulations previously took the position that RMDs were required every year during the 10-year period. Due to confusion over the issue, the IRS issued Notice 2022-53 in 2022 that permitted certain beneficiaries to hold off on RMDs from those inherited IRAs in 2021 and 2022 without penalty.

Increase in age for Required Minimum Distributions (RMDs)

SECURE 2.0 increases the starting age for RMDs to age:

- 73 starting on January 1, 2023 for those born between 1951-1959*; and
- 75 starting on January 1, 2033 for those born in 1960 or later.

The SECURE 2.0 changes do not impact those turning 72 in 2022 (or earlier years) who would have needed to begin (or continue) RMDs in 2022.

No RMDs required from any Roth accounts

Starting in 2024, SECURE 2.0 eliminates pre-death RMDs from Roth accounts in qualified employer plans (such as Roth 401(k)s, Roth 403(b)s, Roth 457(b)s, and Roth components of the Federal Thrift Savings Plan). Previously, only Roth IRAs were exempt from pre-death RMDs.

Congress accomplished what few movie producers have succeeded in doing — **creating a better sequel**.

Based on anticipated future Congressional correction of drafting error in text of SECURE 2.0.

Continued

Increase in catch-up contributions

Starting in 2025, SECURE 2.0 increases catch-up contributions available for account owners ages 60 - 63. Currently (for 2023), those 50 and older can contribute an additional $7,500 to their 401(k), 403(b), and 457 plans on top of the $22,500 current annual limit. Starting in 2025, those aged 60 - 63 will be allowed to contribute the greater of $10,000 (indexed for inflation) or 150% of the regular catch-up contribution amount for such plans in 2024.

Starting in 2024, certain catch-up provisions are modified for higher-earning account owners as catch-up contributions to 401(k), 403(b), and 457(b) plans for employees earning more than $145,000 in wages will be subject to Roth tax treatment.

Decrease in excise tax for failure to take RMDs and change in statute of limitations for violations

SECURE 2.0 reduces the excise tax for failure to take one's full RMD. Starting in 2023, the penalty is reduced from 50% to 25% and may be further reduced to 10% if the mistake is timely corrected for certain accumulations. Effective immediately, the filing of one's individual income tax return (Form 1040) starts a three-year period of limitations for excise tax violations.

New options for 529 college savings accounts

SECURE 2.0 introduces a new option for owners of certain college savings accounts. Starting in 2024, an account owner may be allowed to rollover 529 plan money to a Roth IRA if the 529 plan has been open for 15 years or more and other conditions are met.

These new 529-to-Roth IRA rollovers are limited to $35,000 over the lifetime of the beneficiary and are subject to IRA annual contribution rules. The Roth IRA receiving the 529 plan money must be in the name of the beneficiary of the 529 plan. Any contributions to the 529 plan within the last 5 years (and the earnings on those contributions) cannot be moved to the Roth IRA. Traditionally, leftover funds trapped in 529 plans were only accessible through non-qualified distributions subject to tax penalty.

New options for charitable giving

SECURE 2.0 provides additional options for charitable giving from certain accounts. Starting in 2023, IRA account owners can make a one-time $50,000 distribution to charities through charitable gift annuities, charitable remainder unitrusts, and charitable remainder annuity trusts. Additionally, the Qualified Charitable Distribution (QCD) limit of $100,000 will now be indexed for inflation for distributions made in 2023 or later. QCDs can still occur at age 70½.

New options for funding long-term care insurance premiums

Starting in 2026, SECURE 2.0 provides for penalty-free retirement plan distributions up to $2,500 per year for the payment of premiums for certain long-term care insurance contracts. The applicable policies must provide for high quality of coverage.

Increasing access to retirement funds in case of hardship

SECURE 2.0 provides penalty-free access to tax-preferred retirement accounts in case of certain hardships, including domestic abuse survivors, terminally ill individuals, and victims of a qualified federally declared disaster areas.

SECURE 2.0 provides additional options for charitable giving from certain accounts.

Changes for charitable conservation easements

A conservation easement charitable deduction may be allowed when someone donates real property to a qualified charity. SECURE 2.0 prohibits a charitable deduction for a qualified conservation easement contribution if the deduction claimed exceeds two- and one-half times the sum of each partner's applicable basis in the contributing partnership unless certain requirements are met. The changes are intended to curb "syndicated conservation easement" transactions involving pass-through entities.

Many changes for business owners

For business owners, SECURE 2.0 includes a host of changes that apply to company-sponsored retirement plans geared toward increasing opportunities for employers to offer plans and for employees to participate and save for retirement. A few of the many changes are:

- Automatic enrollment of employees into company-sponsored plans and annual saving rate increases;
- Allowing employer matching contributions to be pre-or post-tax;
- Allowing long-term, part-time workers to participate in company-sponsored plans;
- Allowing employers to treat an employee's student loan payments as elective deferrals for purposes of employer matching contributions; and
- Allowing employers to offer their non-highly compensated employees retirement account-linked emergency savings accounts of up to $2,500 (or lower as set by the employer).

Expansion of ESOP planning opportunities for S corporation stock

Starting in 2028, SECURE 2.0 will permit an individual holding certain S corporation stock to sell such stock to an employee stock ownership plan (ESOP) and defer up to 10% of the taxable gain on such sale, subject to specific conditions. Prior to 2028, only taxable gain resulting from the sale of certain C corporation stock to an ESOP qualifies for income tax deferral. One should note the different deferral limitations on gain recognition that will apply depending on the type of stock sold to the ESOP: 100% of gain on the sale of C corporation stock can be deferred while only 10% of gain on the sale of S corporation stock will be able to be deferred once the law goes into effect.

Conclusion

SECURE was originally drafted to promote saving and investing for retirement. SECURE 2.0 builds upon the original by providing additional benefits, increased flexibility for planning, and should increase participation in retirement savings. As with any major legislation, there are nuances to SECURE 2.0.

To learn more, do not hesitate to contact your BMO team for assistance.