Legal ALERT
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PHILLIPS NIZER LLP
January 2020

TRUSTS & ESTATES LAW ALERT

THIS IMPORTANT ALERT APPLIES TO YOUR RETIREMENT ACCOUNTS

THE SECURE ACT CHANGES THE RULES FOR PLANNING FOR RETIREMENT ACCOUNT BENEFITS

Prior to the recent enactment of the SECURE Act, the annual withdrawals from an inherited IRA account could be "stretched" over the life expectancy of the beneficiary. However, under the new law, most beneficiaries (other than a surviving spouse) inheriting an IRA (or 401(k) plan benefits) on or after January 1, 2020, will be required to completely withdraw the IRA or plan benefits through distributions within 10 years following the death of the IRA owner or plan participant (the "10 year rule"). Spousal rollovers of retirement accounts will still be permitted, enabling surviving spouses to avoid the application of the 10 year rule.

In addition to the principal exception for surviving spouses, there are other limited exceptions to the 10 year rule for certain beneficiaries, including minor children (but not minor grandchildren), children who are still in school until about age 26, chronically ill or disabled beneficiaries and beneficiaries (such as siblings) who are no more than 10 years younger than the IRA owner or plan participant. These beneficiaries (other than minor children) can continue to withdraw IRA or plan benefits over their life expectancies. The exception for minor children only applies until the child reaches the age of majority, after which time the 10 year rule becomes effective.

Under the 10 year rule, distributions are not required to be made annually and the entire IRA or plan account can be allowed to accumulate and grow in value during the 10 year period with all of the funds to be distributed by the end of the 10th year. However, delaying distribution until the 10th year may result in income being taxed in higher tax brackets. Failure to timely withdraw the entire amount in an inherited IRA by the end of the 10th year may result in a 50% tax penalty on the value of the assets that are not timely withdrawn.

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There is some "good news" in the SECURE Act, in that the age at which IRA owners and many plan participants must begin to take out the required minimum distributions is increased from 70½ to 72. In addition, although in the past contributions could no longer be made to an IRA after the account owner attained the age of 70½, contributions now can be made after that age if the account owner has earned income from wages or self-employment.

We expect that the above changes may significantly impact the existing estate plan for many of our clients. For example, if you previously expected that after the death of your surviving spouse your IRA assets would remain in an inherited IRA account with distributions spread over the lifetimes of your children or grandchildren (as allowed under prior law), this may no longer be possible. Under the new law, your adult children and/or your grandchildren will typically be required to receive the entire balance in your IRA account within 10 years regardless of their ability to handle money or other problems with creditors or spouses. The 10 year rule also applies if part of your estate plan includes a retirement asset trust such as a "conduit trust" that is named as a beneficiary of your IRA.

It is important to review your current IRA and 401(k) beneficiary designations and any conduit trust that you may have previously executed, and, as a result, perhaps your entire estate plan, to see if changes are appropriate in light of this new law.

If you would like to speak to us about these issues and or other estate planning issues, please contact us.

For additional information, please contact the attorneys named below or the attorney with whom you have a primary relationship.

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