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CARES Act Coronavirus-Related Distributions: What Are They and Are They Mandatory?

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The Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”) enacted on March 27, 2020, creates favorable tax treatment for “Coronavirus-Related Distributions” from “eligible retirement plans.” The CARES Act also temporarily expands participant loan provisions which apply to any retirement plan permitting participant loans and waivers of Required Minimum distributions for 2020 from defined contributions plans and IRAs. This article focuses on Coronavirus-Related Distributions. For information regarding the changes to participant loans and the RMD waiver, please click [here](#).

WHAT ARE ELIGIBLE RETIREMENT PLANS?

Eligible retirement plans are Qualified Retirement Plans (including 401(k) plans), Section 403(b) Plans, Section 403(a) Annuity Plans and governmental Section 457(b) Plans (aggregately, “Employer Plans”), as well as, Individual Retirement Accounts and Individual Retirement Annuities (“IRAs”) (together, “Eligible Retirement Plans”). These plans *may* permit Coronavirus-Related Distributions, but they are *not* required to do so.

- Some retirement platform providers are advising plan sponsors that they have a limited period (e.g. by March 31, 2020) to “opt out” of the implementation of Coronavirus-Related Distributions. An opt-out period is not mandated by the CARES Act. Plan Sponsors who want more time to think about if, or when, to make Coronavirus-Related Distributions available to participants in their plans should contact the vendor responsible for processing distribution requests to make sure the expanded opportunities are only made available on the Plan Sponsor’s timetable.

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WHAT IS A CORONAVIRUS-RELATED DISTRIBUTION?

A Coronavirus-Related Distributions is *any* distribution from an Eligible Retirement Plan between January 1, 2020 and December 31, 2020 to an individual:

- who is diagnosed with SARS-Co2 or COVID-19 (aggregately “COVID-19”) by a CDC approved test;
- whose spouse or dependent is so diagnosed; or
- who experiences adverse financial consequences as a result of being quarantined, furloughed, laid off, working reduced hours due to COVID-19, unable to work due to lack of child care due to COVID-19 or other factors determined by the Secretary of the Treasury (a “Qualified Individual”).
- Further guidance is needed to determine whether a lump sum distribution from a defined benefit plan on account of a Qualified Individual’s termination of employment will be entitled to be treated as a Coronavirus-Related Distribution. The plain language of the CARES Act suggests that this should be the case.

IS THERE A MAXIMUM AMOUNT THAT CAN BE DISTRIBUTED AS A CORONAVIRUS-RELATED DISTRIBUTION?

The maximum Coronavirus-Related Distributions an individual may receive is \$100,000. This \$100,000 includes distributions from Employer Plans and IRAs. The CARES Act is clear that the aggregate Coronavirus-Related Distributions from Employer Plans cannot exceed \$100,000. This qualified plan limit for an Employer includes distributions from all Employer Plans sponsored by the employer and members of the employer’s controlled group.

The CARES Act appears to leave it up to the individual to act appropriately and not request Coronavirus-Related Distributions from Employer Plans and IRAs which in the aggregate exceed the individual Coronavirus-Related Distribution \$100,000 limit.

- Guidance is needed to address how excess Coronavirus-Related distributions will be handled and the implication, if any, for Employer Plans and their fiduciaries. In the absence of guidance, Employers may want to ask employees to certify that they have not received, or what amount they have received as, other Coronavirus-Related Distributions, in an attempt to avoid excess distributions.

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WHAT DOES AN INDIVIDUAL NEED TO DO TO ESTABLISH THAT HE OR SHE IS QUALIFIED TO REQUEST A CORONAVIRUS-RELATED DISTRIBUTION FROM AN EMPLOYER PLAN OR IRA?

The administrator of the Employer Plan may rely on an employee certification that the employee satisfies the conditions of eligibility to receive a Coronavirus-Related Distribution. Employers should advise participants to retain any documentation to support their eligibility for a Coronavirus-Related Distribution.

- Guidance is required regarding whether IRA trustees and custodians may rely on the account holder's certification that he or she satisfies the conditions of eligibility to receive a Coronavirus-Related Distribution.

ARE CORONAVIRUS-RELATED DISTRIBUTIONS SUBJECT TO THE 10% PENALTY UNDER SECTION 72(T) IF THE QUALIFIED INDIVIDUAL IS UNDER AGE 59 ½?

No.

DOES MANDATORY WITHHOLDING OF INCOME TAX APPLY TO CORONAVIRUS-RELATED DISTRIBUTIONS?

No.

ARE CORONAVIRUS-RELATED DISTRIBUTIONS TAXABLE?

They are taxable but the CARES Act creates a mechanism to recoup the tax upon repayment of the Coronavirus-Related Distribution. Any amount required to be included in gross income will be spread over 2020, 2021 and 2022 unless the Qualified Individual elects otherwise.

An amount equal to Coronavirus-Related Distributions may be contributed (i.e. repaid) to Employer Plans or IRAs at any time during the 3 year period following the date the individual receives a Coronavirus-Related Distribution. These contributions will be treated as non-taxable rollover contributions.

- Guidance is needed regarding the interaction of the income recognition spreading provisions and the repayment/rollover provisions.

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DO PLANS NEED TO BE AMENDED TO REFLECT THE NEW CARES ACT PROVISIONS?

Eligible Retirement Plans can be operated in accordance with the provisions of the CARES Act and related Treasury and U.S. Department of Labor guidance immediately. Plan amendments to reflect the CARES Act provisions will need to be adopted by the last day of the plan year beginning on or after January 1, 2022. Government plans have until the last day of the plan year beginning after January 1, 2024 to adopt such amendment.

Pullman & Comley attorneys have been closely monitoring the many developing implications of the COVID-19 pandemic for businesses and for professionals, including law firms. We have been responding, and will continue to respond, to a wide range of risk management questions. The firm's FOCUS page for the latest COVID-19 advisories may be found [here](#).

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