The Tax Reform Act of 2014

How it would curtail plan tax incentives

REPRESENTATIVE Dave Camp, chairman of the House Ways and Means Committee, released draft legislation on February 26, "The Tax Reform Act of 2014," which overhauls the current tax code and, if enacted, would entail a number of significant changes for retirement plans. The proposal aims to create a simpler tax code with lower rates that nevertheless collects the same amount of tax revenue as does the current code.

The provisions that target employer-sponsored retirement plans include:

Tax preference items. For individuals, the proposal would replace the seven existing tax brackets with just three: 10%, 25% and 35%. The 35% bracket would begin at $400,000 for single filers and $450,000 for joint filers. Certain tax preference items would only be deducted against income in the 25% bracket but not the 35% bracket. These tax preference items include: employer contributions to health and accident plans, "annual additions" to defined contribution (DC) plans—to the extent excluded or deducted from gross income—and the deduction for contributions to health savings accounts (HSAs).

With respect to contributions to defined contribution plans, this rate structure has the potential for individuals to be taxed twice, since it does not appear that there is a credit or offset for the additional 10% tax when such contributions are subsequently distributed from the plan. The 10% tax does not apply to defined benefit (DB) accruals, however, most likely because of the recordkeeping and administrative burdens this would have caused.

Suspension of inflation adjustments. The inflation adjustments for the Section 415 limitations, the elective deferral limit and the catch-up limit would be suspended until 2024, at which time inflation adjustments would recommence based on the level at which they were frozen.

401(k) plans. The proposal allows 401(k) plan participants to contribute half of the maximum annual elective deferral amount (e.g., $8,750 for 2015) to a traditional, non-Roth account. Elective deferrals greater than this limit would have to be made to Roth accounts on an after-tax basis. Participants could contribute the entire annual elective deferral amount ($17,500, or $23,000 if they are eligible for catch-up contributions) into a Roth account, should they choose. Plans that do not currently provide for Roth accounts would need to be amended to add them, but employer contributions would continue to be made to traditional accounts. This new provision would not apply to employers with 100 or fewer employees.

In-service distributions. The proposal provides that all defined benefit plans, as well as all defined contribution plans, would be permitted to make in-service distributions beginning when a participant turns 59.5, arguably removing an incentive to retire early.

Hardship distributions. The proposal changes the rules to allow participants who take a hardship distribution to continue to make contributions to the plan so that the decision whether or not to resume retirement savings does not become an issue.

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Plan loans. Under Camp's proposal, participants who separate from service or whose plan terminates while they have a plan loan outstanding would have until the due date for filing their tax return for that year to contribute the loan balance to an individual retirement account (IRA) in order to avoid the loan being taxed as a distribution.

Net unrealized appreciation on employer securities. The proposal eliminates the current exclusion for net unrealized appreciation on employer securities that are distributed in a lump sum from a qualified retirement plan.

Nonqualified deferred compensation (NQDC). A nonqualified plan participant would be taxed on nonqualified deferred compensation, including equity-based compensation such as stock options, as soon as it vests. Deferred compensation would only include amounts paid more than six months after the end of the taxable year of the employer, during which the right to the payment is no longer subject to a substantial risk of forfeiture.

From the double taxation on retirement savings, to the freeze on inflation adjustments, to the reduction in the limit on pre-tax contributions to 401(k) plans, Camp's proposal disproportionately targets the tax incentives of retirement savings in an effort to raise revenue. Although this is only a discussion draft, such proposals may well be a part of future legislation.

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