

Some random thoughts as we near the fiscal cliff...

The fiscal cliff and pension plans. Remember in 2001, when the 401(k) maximum was \$10,500, and the overall maximum contribution was \$35,000? The current higher limits (\$17,500/\$51,000 next year - see following page for the full list) were a result of the EGTRRA package enacted way back then. The whole package, generally known as the "Bush-era tax cuts," was scheduled to expire at the end of 2010. Of course the tax hike part of it has been postponed for two years (so far), and now that the term "fiscal cliff" has come into popular use, the problem of a sudden increase in taxes and decrease in government spending has caught everyone's attention. It's worth noting that the pension changes were made *permanent* in 2006 - if that wasn't done, we would be peering at the edge of a "pension cliff" where we'd go back to those lower limits (not a crisis, to be honest, but there would definitely be an element of uncertainty in our little part of the world). For better or worse, we have very good lobbyists!

Having said that, there's no guarantee that new deficit-reduction legislation won't directly or effectively cut back on pension contributions. They are, after all, the second-largest tax expenditure (after the exclusion for employer-provided health benefits, and before the mortgage interest deduction). I suspect that some kind of deal will be struck in a back room and (again, for better or worse) the fear of repercussions from going after "my 401(k)" will limit cutbacks to nibbling around the edges at worst. It appears that sentiment is growing for higher tax rates, at least for high earners, and that will actually increase the value of qualified plan contributions (which will be good for our business, although I'm not rooting for it!).

As far as what to do right now - not much, really, since we're just guessing. I will say that Roth contributions are looking more attractive, since tax rates are probably going up. (But I still have an inherent bias against voluntarily paying taxes sooner rather than later, which is exactly what you are doing with Roth contributions.)

Cash balance plans. I am generally very cautious about installing old-fashioned defined benefit pension plans for my clients - they *can* work, but large contributions are *required*, and they are costly due to PBGC premiums and complex administration. (I've seen a few, sold far too aggressively, that have "blown up" and it's not pretty.) Having said that, if you are looking to shelter *significantly more than the \$51,000 defined contribution individual maximum*, you might want to give us a call and ask about a defined benefit plan, or a new hybrid variant, a "cash balance" plan.

Our usual year-end information - chart with new and old limitation numbers, and reminders about plan operations - follows on a separate sheet.

Best wishes for a happy and healthy holiday season from all of us!

Ed Snyder

Annual update

1) The key limitation numbers for 2013 (and the old 2012 numbers) are:

	2012	2013
<i>Maximum annual benefit</i>	\$200,000	\$205,000
<i>Maximum annual contribution</i>	\$50,000	\$51,000
<i>Maximum 401(k) deferral</i>	\$17,000	\$17,500
<i>401(k) deferral catchup (over age 50)</i>	\$5,500	\$5,500
<i>Maximum SIMPLE deferral</i>	\$11,500	\$12,500
<i>SIMPLE catch-up (over age 50)</i>	\$2,500	\$2,500
<i>Maximum IRA contribution</i>	\$5,000	\$5,500
<i>IRA catch-up (over age 50)</i>	\$1,000	\$1,000
<i>Annual compensation limit</i>	\$250,000	\$255,000
<i>Social Security Wage Base</i>	\$110,100	\$113,700
<i>Medicare maximum</i>	Unlimited	Unlimited
<i>Comp. threshold for Highly Compensated Employees</i>	\$115,000	\$115,000
<i>Income (exclusion) threshold for SEPs</i>	\$550	\$550

2) Year-end reminders...

~ **Remember** to check the appropriate boxes on your W-2s for employees who are covered by your plans...this can sometimes get a bit tricky, especially for profit sharing plans which make contributions after the end of the year, so call if you're not sure.

~ **Remember**, when you get your 5500 tax return postcard from the DOL, you do **not** have to send it to us.

~If you'd like to see a trial allocation of a profit sharing contribution, or estimated required contributions to a pension plan, **call or e-mail or fax us** an estimated census (names, compensations, dates of termination if applicable).

~ **Please** be sure to include all employees on your year-end census (for calendar year plans, we mail out blank forms in early January). We like to know about all part-time employees, even if you think they'll never enter the plan. If you have "leased employees" or work with "independent contractors", these individuals may have to be covered, or at least considered in certain coverage and participation tests. (Although true independent contractors are not employees, we sometimes run across a client or prospective client who says they have no employees, but then the phone is answered by someone else. If that someone else is paid hourly and works in your office, he or she is most likely an employee in the eyes of the Employee Benefits Security Agency and the IRS.) **Please call** if you have any questions about this area.

~Employee deferrals (401(k) contributions) must be deposited as soon as they can reasonably be segregated from your business assets. **Small plans (under 100 participants) have a safe harbor of 7 business days, and you simply must meet this safe harbor!** There is absolutely no reason not to make the deposits immediately after each payroll; if participants did not have deferrals withheld then you would have paid the money in their paychecks. If we know of late deposits, we will advise you to make up for lost earnings and charge for those calculations.

Employee deferrals (401(k) contributions) should generally be withheld from **all** pay (including bonuses). (For instance, if a participant has elected a 10% withholding rate, you should withhold 10% of bonuses as well as regular pay.) We have a handful of plans where this does not apply, so check with us if you're not sure.

~You should have a signed form on file for eligible participants who are not deferring to a 401(k) plan. We're getting hints that the IRS might think **you** should make contributions **for them** if they haven't properly elected not to contribute (!)

~In general, you **MUST** maintain a fidelity bond for the greater of 10% of plan assets or 100% of the assets that are not "Qualifying Plan Assets" (generally, "Qualifying Plan Assets" are assets held at a financial institution, and plan loans). Most of our clients' assets are "Qualifying Plan Assets", but you must nevertheless make sure that you maintain the appropriate bond! We look at this each year, but the minimum bond is supposed to be in place at the **beginning** of the year, and we might not recognize a deficiency until we do the review during the (next) year.

3) Terminated participants

Terminated participants are paid according to the terms of your plan document - in most cases, after the end of the plan year in which they terminate, or later. It's a good idea to remind these people, when they leave, that they have plan benefits and should keep you posted as to their whereabouts. (I know, they're the last ones you want to keep in touch with, but it saves some problems down the road. And no, you can't just hope they disappear and use their money for other participants!) We often have problems finding these "lost" participants, and as always, an ounce of prevention is worth a pound of cure.

4) 1099-R reporting and tax withholding

If your plan is on a self-directed platform, Form 1099-R distribution reporting will generally be handled by the investment custodian and you don't have to do anything. Otherwise, we will outsource that reporting for electronic filing...which means you don't have to do anything except file copies that will be sent to you! (However, if there was withholding during the year, you still have to file Form 945, which reconciles the deposits made during the year. We will prepare this form for you with filing instructions.)

If your plan is on a self-directed platform, tax withholding will generally be handled by the investment custodian and you don't have to do anything. Otherwise, we've been processing withholding through EFTPS (Electronic Federal Tax Payment System) as required under new IRS rules - checks are payable to us for processing through our system. (Just follow our directions.)

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