Legacy M&A ADVISORS LLC

M & A UPDATE®

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A Quick Guide to Retirement Plan Limits in 2012

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Introduction

How much do you want to put into your retirement account this year? With the new year, retirement account contribution limits change. Depending on your retirement account, you may be able to contribute $5000, or up to$50,000. Listed below is a description and general guide to each type of account for 2012.

Traditional 401(K)

The 401(K) is a retirement plan arising from Section 401(K) of the Internal Revenue Code. 401(K)s are generally retirement plans sponsored by employers for their employees. However, specific sections of the code also make it advantageous for self-employed people to use 401(K)s. These self employed 401(K)s are typically referred to as Solo(K)s, Self Employed(K)s, or even Baby(K)s. 401(K) contributions are excludible from income in the year made. The annual deductible contribution limit to a 401(K) is $17,000. For those turning 50 and older this year, "a catch-up" or additional contribution of $5,500 is allowed annually. When distributed, the distribution is taxable as ordinary income.

Roth 401(K)

The Roth 401(K) is similar in all respects to the traditional 401(K). However, instead of contributions being deductible, contributions are taxed at the current tax rate of the employee, but are not taxed upon distribution in the future. Roth 401(K) contribution limits are the same as traditional 401(K) limits as stated above.

Traditional 403(B)

This is generally a government employee retirement plan which is equivalent to the private sector 401(K) plans. The annual contribution limit is $17,000, while allowing a $5,500 annual "catch-up" contribution for those 50 and older.

Roth 403(B)

This retirement plan is the same as the traditional 403(B). However, it allows for no tax deduction for contributions made. As any Roth plan distributions when made are not taxed, the same as the Roth 401(K).

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A CASE STUDY

A U.S. District Court ruled that gifts of memberships in an LLC did not qualify for the annual gift tax exclusion as they were grants of future interests. In the case, a married couple put land in a Limited Liability Company and subsequently granted a 5% interest apiece, to their children. The terms of the operating agreement gave the parents essentially full control of the operation up until the point of their death. The underlying assets were of no use to the children until a future time, thus making the grant of the membership interests a future interest. The District court ruled that such interest only granted the children a benefit in the future and was most certainly not within the scope of the annual gift exclusions current interest requirement.

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Traditional IRA

The traditional IRA is an individual retirement account. These can be set up by an individual at a bank or other financial organization. The annual contribution limit for 2012 is $5,000 and the law allows $1,000 annual "catch-up" contribution limits for those turning 50 years of age and older this year. Under the traditional IRA, contributions are deductible, but distributions are taxed when made in the future.

Roth IRA

This is also an individual retirement account. The contribution limits are the same as the traditional IRA, however they are not deductible in the year made. Staying true to the "Roth" form, the contributions are not deductible, but the distributions do not get taxed when made in the future.

Simplified Employee Plan (SEP)

An SEP is a retirement plan where the employer contributes directly to an IRA of an employee. The employer contributions are excluded from the employee's gross income up to a maximum of 25% of compensation or $50,000, whichever is less. The employee is also allowed to contribute to the plan. SEPs are set up by completing IRS form 5305-SEP and retaining the form as evidence of the plan. The form 5305-SEP is not submitted to the IRS but kept for reference and in the event of an audit of the plan. Proceeds are taxed as ordinary income when distributed.

SIMPLE IRA

This plan is established by an employer by completing forms 5304-SIMPLE, when the employee can choose the financial institution, or 5305-SIMPLE, when the employer chooses the financial institution, which will receive the contributions. The annual limit of contributions is $11,500 annually, while allowing $2,500 in annual catch-up contributions. The contributions are not taxed when made, but are taxed as ordinary income when received.

Conclusion

It is best to maximize your income by investing in your future and your retirement. Contributing money to a retirement plan not only invests in your retirement, but also puts the money in a place where creditors are usually unable to garner the money. There is still time to contribute to your retirement plan in order to reduce your taxes payable or increase your return amount, even for 2011. While the above amounts are for 2012, it is advisable to check and see if you contributed the maximum for 2011. Knowing the basics and amounts that can be contributed to the respective plan is always valuable knowledge to have when you are planning for your retirement. If you have further questions about retirement plans, feel free to call The Center for further details.

LEGISLATIVE UPDATE: Congress has extended the 2% payroll tax reprieve for an additional 2 months. This means the tax cut will be extended until February 29, 2012.

Dr. Bart A. Basi is an attorney, CPA, and the Senior Advisor of The Center for Financial, Legal & Tax Planning, Inc, a full service company specializing in financial, legal & tax matters. Basi is a nationally recognized author, lecturer, and advisor on how to structure deals to minimize taxes. Tax structure makes the difference between getting the deal done and watching the deal fall apart. Many of you may be familiar with Basi and the topics he covers in the Financial, Legal & Tax Advisory which may be read in various industry-specific trade publications.

Points of Interest

- **Depending on your retirement account, you may be able to contribute $5,000, or you may be able to contribute $50,000.**
- **The traditional IRA is an individual retirement account. These can be set up by an individual at a bank.**
- **Contributing money to a retirement plan not only invests in your retirement, but also places the money in a place where creditors are usually unable to garner the money.**

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A CASE STUDY CONTINUED:

Editor's Comment: Once again, taxpayers lost when they tried to bend the laws too far in their favor. Utilizing an LLC or Limited Partnership for family tax planning has its place. There are legitimate uses and then there is tax avoidance such as occurred in the present case. When using these instruments, pay attention to what is going where and what the fair market values are, and whether the transaction makes sense from a business perspective.

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Are You Thinking of Selling Your Business in 2012?

In December, 2011, The New York Times published an article entitled: Why Some Business Owners Think Now Is the Time To Sell.

While the decision to sell your business should be based on a careful analysis of many factors, that are several reasons highlighted in the article and confirmed by my own experience that 2012 may be a good year to sell.

1. Expiration of the Bush-Era Tax Cuts. The current, very low tax rates on dividends and capital gains will automatically expire at the end of this year. While Congress may yet act to extend or moderate these scheduled tax increases, it seems likely that future tax rates will almost inevitably be higher than in 2012. Your tax accountant is your best source of information on how this might affect your personal tax situation, and early in the year as you're finalizing your 2011 YE financial statement would be a good time to ask.

2. 2011 was a good year for many small businesses, and 2012 is expected to be even better. Revenues have slowly returned to pre-2008 levels, and more importantly, many businesses have shown dramatic improvement in their bottom line and cash flow, based on their focus on cutting/controlling costs during the Great Recession.

3. Buyers are numerous and well-funded. Strategic, corporate buyers are reporting record profits and have very strong cash positions and balance sheets. Private equity groups (PEGs) continue to be very well funded and are aggressively chasing what few quality companies are on the market. Community banks, as well as some large, national banks are beginning to once again offer acquisition financing for small, privately held companies. International buyers are still aggressively pursuing acquisition of US companies.

4. Don't want to miss this business cycle. Many business owners I talk with were thinking of selling just as the Great Recession arrived, and have been forced to delay their retirement and put all of their energy into successfully navigating their business through the most recent downturn and have no desire to do it again. Difficult to predict when the next economic downturn might occur; so now may be the time to act.

5. Market may shortly be flooded with Baby Boomer sellers. As record numbers of Baby Boomers reach retirement age over the next 12 – 15 years, some observers predict that the market will quickly become flooded with Baby Boomer-owned businesses that need to be sold. One author estimates that $10 trillion of business wealth will change hands as the Baby Boomer generation retires. Should the supply of businesses available for sale exceed the demand, it will have a depressing effect on valuations.

If you know of a business owner who's thinking of selling or buying a business and who might benefit from a free, confidential, consultation with us, have them contact me directly, and in strictest confidence, at 813.299.7862, or via e-mail at mertel@legacymandaadvisorsgroup.com

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Frequently Asked Questions…

Q: As an employer, am I required to pay my employees sick time, vacation, and otherwise supply them with paid time off?

A: Under the Fair Labor Standards Act, there is no employer requirement to give employees paid time off. At the same time, states may vary on their time off requirements for employees, but generally there is no paid time off requirement.

Q: How many days per week can an employer require an employee to work?

A: Again, there are two sets of rules. Under the FLSA, there is no maximum. However, individual states will have varying requirements. For example, in Illinois, employees are required to be off at least one 24 hour period during a seven day work week.

Q: Are employers ever required to pay double time?

A: The only time an employer would be required to pay a double time wage would be if there is an agreement between the employer and the employee to require this to be so. Otherwise, holidays, weekends, and other time requires no double time. The FLSA does require time and a half to be paid after 40 hours of work during a week.