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### MARCH 2007 CURRENT EVENTS

1. Notice 2007-7 (1/10/07) offers (confusing) guidance on non-spouse direct rollovers from qualified plans. This Notice applies to Designated Beneficiaries only (not to estates or Trusts that are not Designated Beneficiaries). Q&A-16

a. Background. New IRC 402(c)(11) effective 1/1/07, allows non-spouse beneficiaries to rollover qualified plan accounts directly to an IRA.

b. Notice 2007-7.

(1) General Rule. Qualified Plan minimum distributions (including the 5-year rule) apply to inherited IRAs.

(2) 5-Year Rule Under Plan - Death Before Required Beginning Date ("RBD").

a) Direct rollover before 12/31 year after death (Death Before RBD). If beneficiary takes direct rollover before 12/31 in the year after death (before election to use 5-year rule which must be made by 12/31 in the year after death and is irrevocable under Reg. 1.401(a)(9)-3, Q&A 4(c)), beneficiary not stuck with 5-year rule ("Special Rule").

1) Plan must allow non-spouse direct rollover. If plan offers lump sum benefit only, Q&A-19 may require IRA to be distributed in lump sum, making IRC 402(c)(11) meaningless.

2) Beneficiary must take first RMD by 12/31 of year after Participant's death based on beneficiary's life expectancy. Q&A-17(c)(2). No RMD necessary if rollover prior to 12/31 of the year Participant dies.

b) Direct Rollover After 12/31 Year after Death - Death before RBD. If beneficiary takes direct rollover after year after 12/31 year death, beneficiary stuck with 5-year rule. Q&A -19; -17(b).

(3) Death after RBD – direct rollover ok, regardless of payout options under Plan, except for Participant's RMD for year of death.

c. **Significance.**

(1) Direct rollover rule will not help when:

(a) Plan does not provide; or

(b) Death before RBD: 1) beneficiary taking out distributions under 5-year rule, and 2) beneficiary does not transfer to the inherited IRA by 12/31 year after death.

d. **Planning.** Because of uncertainty, Participants should rollover Plan to IRA upon termination of employment vs. leaving \$ in employer's plan.

2. Annuities held by trust considered owned by natural persons.

a. In PLR 200626034(7/28/06), annuity was held by an irrevocable trust.

b. Under IRC 72(u)(1), the annuity's inside build-up is not taxable if the annuity held by a natural person or agent for a natural person.

c. Held. Irrevocable trust considered agent for beneficiaries – not taxable.

d. Watch out if corporation or LLC owns annuity – probably currently taxable.

3. Employer's payroll taxes and deferred compensation may be currently deductible. Rev. Ruling 2007-12(2/15/07).

a. A new revenue ruling concludes that an accrual basis employer can deduct its payroll tax liability in the year the "all events" test and "recurring item" exception are met (generally, obligation is fixed under Reg 1.461-1 and -5), even though the compensation to which it relates is deferred compensation deductible under Code Sec. 404 in the following year.

b. **Significance.**

(1) Taxpayer can deduct FICA and FUTA taxes in year obligation is fixed, even though compensation is deductible in year following.

(2) Benefit. If taxpayer is over Taxable Wage Base (2007 - \$97,500), taxpayer just pays the medicare tax (1.45% vs. 6.2%).