Why Accountants Should Care About Their Clients' Retirement Plans

By Ary Rosenbaum, Esq.

A well rounded retirement plan sponsor will be surrounded by a group of advisors. The plan sponsor may have an attorney on retainer, a financial advisor, an independent third party administrator (TPA) and an accountant. Of all advisors, it is my opinion that the accountant is a plan sponsor's most trusted advisor because of the nature of the relationship and the annual requirement of filing taxes. Since the only two certain things in life are death and taxes, it should be no surprise that there usually is a close knit relationship between the accountant and their client. Thanks to the close knit relationship, accountants should be more aware of their clients' retirement plans and the issues that come with them.

For many accountants, they are more than just being an accountant for their client. For many clients, they are an extended family member. For some clients, an accountant runs their life where the client can't function without him. So it is my opinion that accountants should concentrate on their clients' retirement plans, so their clients could avoid the potential pitfalls that come with plan sponsorship.

Many accountants will say that becoming a retirement plan expert isn't their role and they are correct. They don't have to be retirement plan experts, but they do have to understand that retirement plans are more than just simple tax deductions on a return. Retirement plans represent a vehicle for retirement savings and they come in different forms with different funding requirements and different amounts of deductions.

A perfect example of the difference in plan designs was the case of a lawyer who called me up with a question on what was the best retirement plan for him. His accountant thought the self employed pension (SEP) plan was the best savings vehicle because it allowed the attorney to have a maximum contribution of $49,000 without the need to hire a TPA or file a Form 5500. The accountant was wrong because his client just got a legal fee of $500,000 and he was 75. Since the attorney was a sole proprietor, the defined benefit plan was the best vehicle. Working with an actuary, I developed a defined benefit plan that allowed this attorney a maximum contribution of $230,000 for that year. Any accountant will agree that there is a wide tax savings between a $230,000 deduction and one that is only $49,000.

Too many retirement plan sponsors leave money on the table by just setting up a plan vanilla 401(k) or SIMPLE IRA or SEP. Retirement plans are like suits. After I buy a suit, I have to get it tailored so I can get a proper fit. The same can be said about retirement plans. While too many plan sponsors take the cookie cutter approach to their retirement plan needs and use a straight 401(k) plan with a prototype document, so many clients leave money on the table by not getting the right retirement plan and specifications to fit their retirement plan needs. There are so many different retirement plan designs like unit credit defined benefit, new comparability, safe harbor 401(k), automatic enrollment, cash balance, floor offset, that an advisor would be foolish not to consult with retirement plan experts on what type of plan fits the client the best.

So instead of just taking the retirement plan contribution amount as a deduction on a client's tax return, an accountant should understand what type of retirement plan their client has, as well as who does the administration and the financial advising. The accountant should also sit down with the client to determine whether the retirement plan fits their needs or whether some other plan design is a better fit. I have seen too many defined benefit plan sponsors determine too late that the defined benefit plan no longer fits their needs. I have seen too many 401(k) plan sponsors leave money on the table because they didn't maximize tax savings for highly compensated employees through a safe harbor and/or new comparability plan design.

An accountant's role is not to become a retirement plan expert. Retirement plan design is an art form, so an accountant doesn't have the background to become an artist. An accountant should surround themselves with several retirement plan experts, TPAs, and ERISA attorneys to assist in meeting the retirement plan needs of their clients. An accountant should work with several TPAs because one TPA cannot meet the needs of all retirement plan needs because each TPA has its own niche and own market it serves. In addition it's not wise for an accountant to have all its eggs with one TPA. I knew one accountant who constantly referred all his clients to one TPA. The only problem was that it was discovered many years later that the TPA wasn't doing their job when it came to plan valuations and distribution forms for owners to take out their retirement savings. Unfortunately, one of the accountant's clients is being sued by the Department of Labor (DOL) because the DOL is convinced that an 80 year old stole money from a plan that she set up and who was entitled to most of the contributions because she was the owner of the company. So it pays for an accountant and their reputation to refer clients to several TPA firms.

Accountants should always consider developing a relationship with an ERISA attorney. An ERISA attorney is usually called in after the mess has occurred, but the use of an ERISA attorney at all times during the administration of a retirement plan can avert a disaster.

A perfect example of why an ERISA attorney is sometimes needed was the case of a company where the TPA never advised the client that the defined benefit plan no longer met the needs of the company because the plan was set up when there were only four employees and the plan became cost prohibitive when it had 12 employees. Unfortunately, that wasn't the problem. One of the owners of the company had invested with a financial advisor who was recommended to him by his father in law. The owner of the company had an accountant that was his personal accountant and the accountant of the company. Based on the way that this financial advisor invested and the many trades he made, the accountant recommended that this owner of this company no longer invest with this advisor in his personal accounts and only use him for retirement accounts because of the potential capital gains. The owner of this company convinced his partners to invest all of the defined benefit plan's assets with this financial advisor. That financial advisor was Bernie Madoff. While the TPA and accountant thought nothing of a defined benefit plan investing all the assets with a financial advisor with some convoluted trading system that was eventually discovered to be a huge ponzi scheme, a good ERISA attorney would have advised the company that this type of investment was imprudent for such a plan. An ERISA attorney would have reiterated to the owners of the company of their fiduciary responsibility and how putting all their eggs in the basket of a financial advisor that was not transparent and was not filled with fixed income investments to meet the targeted interest rate stated in the defined benefit plan.

The fact is that retirement plan are so highly technical, there are so many ways where the plan's tax exempt status could be threatened, which would jeopardize the previous tax deductions that plan sponsor too for employer contribution as well as the immediate recognition of income for all plan participants. Since one of the main tasks of an accountant is to protect their clients from negative tax treatment, accountants should focus on their clients' retirement plans to ensure that their client has an efficient plan design, has a financial advisor that is doing their job, and doesn't have serious plan errors that could affect the plan's tax exempt status. Again, an accountant is busy and doesn't need to be a retirement plan expert; he or she just needs to be surrounded by retirement plan experts that can help the accountant and the plan sponsor in making sure that the plan sponsor's retirement plan is running correctly.

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