Unlocking a World of Investment Opportunities

Presents:

The Solo 401(k) Plan

The Ultimate Retirement Solution for the Self-Employed

January 2012

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What is a Solo 401(k) Plan?

- 401k plans are defined in the Internal Revenue Code (Section 401) as retirement savings trusts. As the name implies, the Solo 401(k) plan is a 401(k) plan designed for a self-employed individual or the sole owner-employee of a corporation.
- The "one-participant 401(k) plan" is not a new type of plan. It is a traditional 401(k) plan covering only one employee.
- The surging interest in these plans is a result of the EGTRRA tax law change that became effective in 2002.
  - The law changed how salary deferral contributions are treated when calculating the maximum deduction limits for contributions to a 401(k) plan.
- The Solo 401(k) Plan is best suited for business owners who do not have any employees, other than themselves and perhaps their spouse.

Who can use a Solo 401(k) Plan?

- A Solo 401(k) plan is perfect for any sole proprietor, consultant, or independent contractor that operates a business with no employees
- A Solo 401(k) can be adopted by a sole proprietorship or any LLC, corporation, or partnership with no employees other than the owner(s)
- No tax upon the transfer or rollover
  - IRA – Traditional (cannot role a Roth IRA into a 401(k) Plan)
  - SEP
  - Simple
  - 401(k)
- Few investment restrictions
- "Checkbook Control"

Solo 401(k) Eligibility

- Eligibility Requirements:
  (1) The presence of self employment activity
  (2) The absence of full-time employees

Solo 401(k) Eligibility Requirements Self-Employment Activity

- **Self Employment Activity**:
  - includes ownership and operation of a sole proprietorship, LLC, C Corporation, S Corporation, and Limited Partnership where the business intends to generate revenue for profit and make significant contributions to the plan.
- **Generate Revenue for Profit**:
  - There are no established thresholds for how much profit the business must be generated.
  - Business being conducted is a legitimate business that is run with the intention of generating profits
  - The self employment activity can be part time, and it can be ancillary to full time employment elsewhere.
  - A Person may participate in an employer's 401(k) plan in tandem with their own Solo 401(k) - the employee elective deferrals from both plans are subject to the single contribution limit.

Solo 401(k) Eligibility Requirements Absence of Full Time Employees

- Absence of Full Time Employees:
  - Solo 401(k) Plan is best suited for self-employed individuals or small business owners who have no other full-time employees and are not employed by any business owned by them or their spouse (an exception applies if your full-time employee is your spouse).
    - The business owner and their spouse are technically considered “owner-employees” rather than “employees”.
- The following types of employees may be generally excluded from coverage:
  - Employees under 21 years of age
  - Employees that work less than a 1000 hours annually
  - Union employees
  - Nonresident alien employees

Solo 401(k) Advantages

- **High Contribution Limits:** While an IRA only allows a $5,000 contribution limit (with a $1,000 additional "catch up" contribution for those over age 50), for 2012, the Solo 401(k) annual contribution limit is $50,000 with an additional $5,500 catch up contribution for those over age 50.
- **Loan Feature:** While an IRA offers no participant loan feature, the Solo 401k allows participants to borrow up to $50,000 or 50% of their account value (whichever is less) for any purpose.
- **Roth Type Contributions:** With IRAs, those who earn high incomes are disallowed from contributing to a Roth IRA or converting their IRA to a Roth IRA. The Solo 401(k) plan contains a built in Roth sub-account which can be contributed to without any income restrictions. Make Roth contributions up to $22,500 versus $6,000 in the case of a Roth IRA.
- **Cost Effective Administration:** In general, the solo 401(k) plan is easy to operate. There is generally no annual filing requirement unless your solo 401(k) plan exceeds $250,000 in assets.
- **Exemption from UDFI:** When an IRA buys real estate that is leveraged with mortgage financing, it creates Unrelated Debt Financed Income (a type of Unrelated Business Taxable Income) on which taxes must be paid. A Solo 401(k) plan is exempt.

Solo 401(k) Contribution Limits

The annual Solo 401k contribution consists of two parts, an employee salary deferral contribution and an employer profit sharing contribution. In 2012 the total contribution limit for a Solo 401k is $50,000 or $55,500 if age 50 or older. The total allowable contribution limits are combined to get the maximum Solo 401k contribution limit.

Employee Elective Deferrals

Up to $17,000 per year can be contributed by the participant through employee elective deferrals. An additional $5,500 can be contributed for persons over age 50. These contributions can be up to 100% of the participant's self employment compensation.

Employer Profit Sharing Contributions

Through the role of employer, an additional contribution can be made to the plan in an amount up to 25% of the participant's self employment compensation (20% in the case of a sole proprietorship or single member LLC).

Total Limit

The sum of both contributions can be a maximum of $50,000 per year (for 2012) or $55,500 for persons over age 50.

Solo 401(k) Contributions Maximize your Benefits

Maximum Annual Contributions	Traditional/Roth IRA	SEP IRA	SIMPLE IRA	SOLO 401K Plan
	$5,000 or $6,000 if individual is over the age of 59	25% of individual's compensation up to $50,000 (20% if self-employed)	The amount the employee contributes to a SIMPLE IRA cannot exceed $11,500 for 2011, plus a $2500 catch-up contributions	$50,000, or $55,000 if individual is over the age of 50

Solo 401(k) Loan Feature

- A Solo 401(k) participant can borrow up to either $50,000 or 50% of their account value - whichever is less. This loan has to be repaid over an amortization schedule of 5 years or less with payment frequency no less than quarterly. The interest rate must be set at a reasonable rate of interest.

- The Loan can be used for ANY purpose
  - Lend the funds to a third-party who will pay a higher interest rate
  - Invest in a real estate project that offers a higher rate of return
  - Avoid distribution penalties and gain use up to $50,000 immediately with no restrictions
  - Invest in a new franchise or business
  - Invest in a transaction that would otherwise be a Prohibited Transaction under Internal Revenue Code Section 4975
  - Quick, easy, and cheap access to a $50,000 loan to be used for any purpose
- Loan is NOT available with a Self-Directed IRA

Solo 401(k) – Roth Contributions

- A Solo 401(k) participant can make pre-tax as well as Roth contributions to the 401(k) Plan
  - Total contributions cannot exceed threshold - $17,000 if under 50 and $22,500 if participant is over the age of 50
  - Profit sharing contributions must be made in pre-tax amounts
- All Roth contributions are made after tax
  - Roth Contributions are not tax-deductible
  - All income and gains generated by the Roth 401(k) account grow tax-free
    - Roth Account must be opened at least 5 years and distribution must be after the age of 591/2
- A Roth 401(k) Account presents many tax advantageous investment opportunities
  - Tax-free investments
    - All investment gains are tax-free

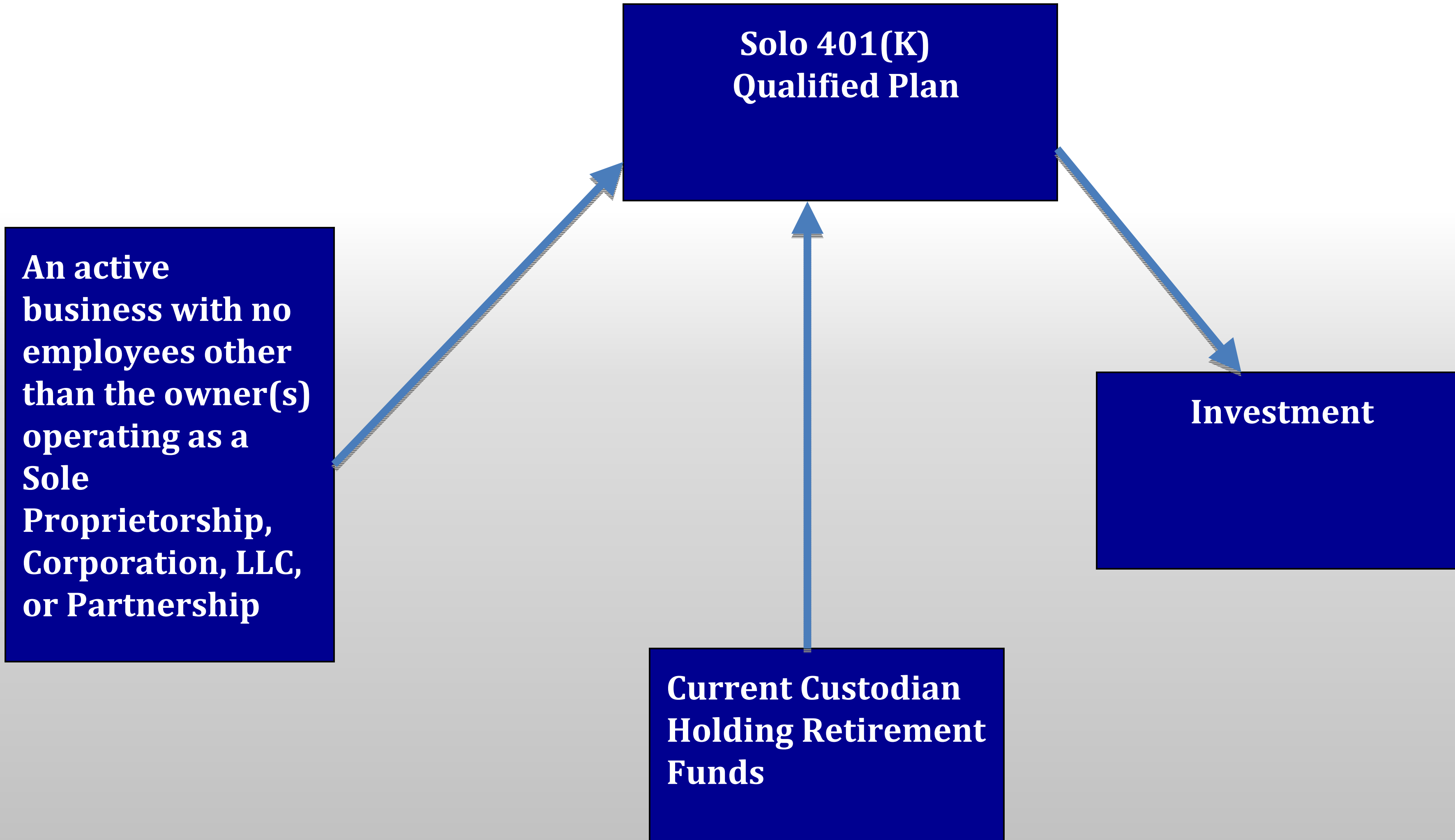
Cost Effective Administration

- A Solo 401(k) Plan account can be opened up at any local bank or credit union (i.e. Chase, Wells Fargo, etc).
  - No special custodian is required
  - No custodian fee is imposed
- You can serve as Trustee of your 401(k) Plan. This means that all assets of the 401(k) trust are under the sole authority of the Solo 401k participant. A Solo 401(k) plan allows you to eliminate the expense and delays associated with an IRA custodian, enabling you to act quickly when the right investment opportunity presents itself.
- In general, the solo 401(k) plan is easy to operate. There is generally no annual filing requirement unless your solo 401(k) plan exceeds $250,000 in assets.
  - If your Solo 401(k) Plan exceeds $250,000 in asset value in any year, the Plan Administrator you will need to file a short information return with the IRS (Form 5500-EZ)

Exemption from UDFI

- When an IRA buys real estate that is leveraged with non-recourse financing (debt-financed property), it creates Unrelated Debt Financed Income ("UDFI").
- UDFI is a type of Unrelated Business Taxable Income subject to tax pursuant to Internal Revenue Code Section 514 on which taxes must be paid.
- A Solo 401(k) plan is exempt from UDFI.
- With the UBTI tax rates at approximately 35%, the Solo 401(k) Plan offers real estate investors looking to use non-recourse leverage in a transaction with a tax efficient solution.

How it Works?


Solo 401(K) Qualified Plan
An active business with no employees other than the owner(s) operating as a Sole Proprietorship, Corporation, LLC, or Partnership
Investment
Current Custodian Holding Retirement Funds

Step #1
Business Adopts Solo 401(k) Plan

- A Solo 401(k) can be adopted by a sole proprietorship or any LLC, corporation, or partnership with no employees other than the owner(s)
- Eligibility Requirements:
  (1) The presence of self employment activity
  (2) The absence of full-time employees
- You can serve as Trustee and Plan Administrator of the 401(k) Plan
  - "Checkbook Control"
  - Making an investment is as simple as writing a check

Step #2
Tax-Free Transfer of Retirement Funds to New Solo 401(k) Plan

- Tax-Free Rollover of Retirement funds to 401(k) Plan
  - IRA Financial Group's tax attorneys will help you complete the tax-free Rollover/Transfer
- Retirement Accounts that may be Transferred to a 401(k) Plan:
  - Traditional IRA (A Roth IRA can NOT be rolled into a 401(k) Plan)
  - SEP
  - Simple
  - 401(k)
  - 403(b)
- New 401(k) account can be opened at any local bank or credit union (i.e. Chase, Wells Fargo, etc.)

Step #3
Solo 401(k) Plan Makes Investment

- You as trustee of the Solo401(k) have the sole authority to make investment decisions on behalf of your 401(k) Plan
  - “Checkbook control”
    - Trustee Directed Plan vs. a Custodian Controlled Plan (I.e. E Trade Schwab)
  - Making an investment is as simple as writing a check
- Investment flexibility
  - Real estate, tax liens, precious metals, notes, etc.
- The investment is made in the name of the 401(k) Plan

Advantages of Using a Trustee Directed Solo 401K Plan

- Trustee Directed Solo 401K Plan:
  - Checkbook Control: You as trustee of the Solo 401(k) Plan make the investment decision – not the bank. Making an investment is as simple as writing a check!
  - Unlimited Investment Opportunities: Unlike a Custodian Controlled Solo 401(k) Plan, which limits your investment options, with a Trustee Directed Solo 401K Plan, as long as the investment is not prohibited by the IRS – you can do it. Thus, you can buy real estate, tax liens, precious metals, private business investments, and much more.
  - Loan Feature: Unlike a Custodian Controlled 401(k) Plan which does not offer a loan feature, with a Trustee Directed Solo 401K Plan, you can borrow $50,000 or $50,000, whatever is less tax-free.
  - Purchase Life Insurance : Unlike a Custodian Controlled 401(k) Plan which does not offer one the ability to purchase life insurance, with a Trustee Directed Solo 401K Plan, you can use pre-tax retirement funds to purchase life insurance.
  - Roth Conversion: Unlike a Custodian Controlled 401(k) Plan which does not offer one the ability to make a Roth conversion, with a Trustee Directed Solo 401K Plan, you can convert your pre-tax retirement funds to an after-tax Roth account.

Purchasing Real Estate with a Solo 401(K) Plan

- Real estate income or gains generated by the Solo 401(k) Plan are tax-deferred/tax-free profits.
- Using a Solo 401(k) Plan to purchase real estate allows the Solo 401(k) Plan to earn tax-free income/gains and pay taxes at a future date (in the case of a Roth 401(k) account the income/gains are always tax-free), rather than in the year the investment produces income.
- Non-recourse leverage will not trigger UBTI like it would with an IRA (IRC 514).

Fact or Fiction

- As a Trustee of the Solo 401(k) Plan I can make investments in traditional and non-traditional investments, such a real estate
  - **FACT**
- A solo 401(k) Plan can be adopted by any business with no employees including a Sole proprietorship, LLC, or Corporation
  - **FACT**
- As a self employed individual under the age of 50, I can split my $17,000 deferral between pre-tax deferrals and after-tax deferrals (Roth) as long as I do not exceed $17,000 combined
  - **FACT**
- For a Corporation, employer contributions to a 401(k) Plan are due when the employer's tax return is due and employee contributions are due by December 31
  - **Fact**
- For a Sole proprietorship, LLC, or partnership, contributions to a 401(k) Plan are due when tax return is due including extensions
  - **Fact**
- If I have two jobs, I can contribute the maximum to both company's plans
  - **Fiction (limits are by person, not by plan)**

Categories of Prohibited Transactions

- Other than the following 4 categories of prohibited transactions, you are essentially permitted to engage in any investment with your Solo 401(k) Plan:
  - 1. Purchase collectables (i.e. antiques, rugs, stamps, etc)
  - 2. Purchase stock in a S Corporation
  - 3. Invest in any transaction with a "Disqualified Person"
  - 4. Engage in any transaction that directly or indirectly benefits you in any way (i.e. buying a home with your retirement funds and living in it)

The IRC 4975 Prohibited Transaction Rules

- Internal Revenue Code Section 4975 prohibit fiduciary and other "Disqualified Persons" from engaging in certain type of transactions.
- A "Disqualified Person" is basically includes the 401(k) Plan participant, any ancestors or lineal descendants of the 401(k) Plan participant, and entities in which the 401(k) Plan participant holds a controlling equity or management interest.
  - Exceptions
    - Brother/Sister
    - Cousin
    - Aunt/Uncle
    - Friend

IRC 4975 Prohibited Transactions Continued

- Solo 401(k) Plan prohibited transactions are listed in IRC Section 4975; prohibited transactions are any direct or indirect:
  - sale or exchange, or leasing, of any property between a plan and a "Disqualified Person";
  - lending of money or other extension of credit between a plan and a "Disqualified Person";
  - furnishing of goods, services, or facilities between a plan and a "Disqualified Person";
  - transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a plan;
  - act by a "Disqualified Person" who is a fiduciary whereby he deals with the income or assets of a plan in his own interests or for his own account; or
  - receipt of any consideration for his own personal account by any "Disqualified Person" who is a fiduciary from any party dealing with the plan in connection with a transaction involving the income or assets of the plan.

Common Prohibited Transactions

- Engaging in a transaction directly or indirectly with a “Disqualified Person”
- The sale, exchange, or lease of property to a “Disqualified Person”
- 401(k) Plan Purchase of a House/Apartment for or from a “Disqualified Person”
- Using the 401(k) Plan as security for a loan
- Guaranteeing a loan to your 401(k) Plan
- Loans between the 401(k) Plan and a “Disqualified Person”
- Selling personal assets to the 401(k) Plan
- Receiving any consideration for your own personal account in connection with a transaction involving the income or assets of the 401(k) Plan

Common Prohibited Transactions (Continued)

- Buying property in the 401(k) Plan for personal use
- Being compensated for any services performed for or on behalf of the 401(k) Plan
- Purchasing property from a “disqualified” relative i.e. Spouse, Children, Parents of the 401(k) Plan Participant
- A 401(k) Plan investment in an enterprise in which the 401(k) Plan Participant owner and other “Disqualified Person” already owns 50% or more
- Indirect transactions involving a Disqualified Person
- Co-mingling of funds between the 401(k) Plan account and the Plan Participant’s personal bank account

Penalties

- The Department of Labor has jurisdiction over Solo 401(k) plans for purposes of the Prohibited Transaction rules, including individual requests for exemptions from those rules. There are two different consequences for incurring a prohibited transaction under the Code:
  - For the 401(k) Plan participant, the 401(k) Plan account is deemed immediately disqualified as of January 1 of the year in which the prohibited transaction occurred (an extremely severe tax consequence), resulting in current income tax treatment of the 401() Plan account and possible excise tax penalty for a premature withdrawal from the 401(k) Plan. If this deemed "distribution" occurs, it will be subject to ordinary income tax and, if you were under the age of 59 1/2 at that time, a ten (10%) percent excise tax on premature distributions may also be assessed.
  - For the "Disqualified Person" involved in the transaction, the initial tax on a prohibited transaction is 15 percent of the amount involved for every year (or portion thereof) in the "taxable period," which is the period beginning when the transaction occurs and ending on the date of the earliest of (1) the mailing of a notice of deficiency for the tax, (2) assessment of the tax, or (3) correction of the transaction. The 15% excise tax is followed by an additional tax of 100% if the disqualified person is recalcitrant.

UBTI

- UBTI is defined as "gross income derived by any organization from any <u>unrelated</u> trade or business <u>regularly</u> carried on by it
  - Exceptions:
    - dividends, interest, annuities, royalties, most rentals from real estate, and gains/losses from the sale of real estate (the exception would apply to tax liens assuming it is not inventory)
    - rental income generated from real estate that is "debt financed" loses the exclusion,
- Real Estate
  - In general, Gains and losses on dispositions of property (including casualties and other involuntary dispositions) are excluded from UBTI unless the property is inventory or property held primarily for sale to customers in the ordinary course of an unrelated trade or business.
- Unrelated Debt Financed Income (UDFI): A Solo 401(k) plan is exempt from paying tax on the nonrecourse leverage portion of the real estate transaction (IRC 514)
  - This exemption does not apply to IRAs

The IRA Financial Group

- Founded by a group of top law firm tax and ERISA lawyers
  - White & Case LLP
  - Dewey & LeBoeuf LLP
- Attorney owned and operated
- Market's leading Self Directed IRA LLC and Solo 401(k) Facilitator.

Our Solo 401(k) Plan Services

- Adoption Agreement
- Basic Plan Document
- EGTRRA Amendment
- Summary Plan Description
- Trust Agreement
- Appointment of Trustee
- Action by Board of Directors
- Beneficiary Designation
- Loan Procedure/Loan Documentation
- Transfer Request Forms for incoming funds transfers
- Newly assigned Employer Identification
- Number from the IRS Determination letter stating that this is a Prototype Plan that meets the requirements of a qualified plan
- IRS Tax Opinion Confirming validity of Plan
- Direct access to our on-site tax attorneys
- **IRA Financial Group will take care of everything. The whole process can be handled by phone, email, fax, or mail. Our expert tax and ERISA attorneys are on site greatly reducing the set-up time and cost. Most importantly, you will find that our fee for this service is significantly less than other companies that perform the same or similar services.**

Why Choose IRA Financial Group?

- We are attorney owned and operated
  - All legal drafting is done in-house by our attorneys
- We do not have to outsource our legal work like our competitors do
- Expertise in the area
- Experience breeds efficiency
- Work directly and have direct access to one of our on-site tax attorneys

Contact Information

Unlocking a World of Investment Opportunities

For more information on the Solo 401(k) Plan Structure or to get started today please contact one of our 401(k) Plan Experts at 800-472-0646 or visit our website at www.irafinancialgroup.com