January 19, 2016

But Wait...There’s More...Additional Revisions to the Employee Plans Determination Letter Program

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As we previously reported in an August 2015 Client Alert, the IRS has eliminated the five-year remedial amendment cycle system for individually designed plans, effective Jan. 1, 2017. Earlier this month, the IRS issued Notice 2016-03, which provides related guidance for sponsors of individually designed plans who are in controlled groups and affiliated service groups and previously made Cycle A elections. The guidance also voids expiration dates on determination letters issued prior to Jan. 4, 2016, and discusses the period on or after Jan. 2, 2016, during which an employer may establish or adopt a pre-approved defined contribution plan and, if permissible, apply for a determination letter.

Cycle A Determination Letter Submissions for Controlled Groups and Affiliated Service Groups

Under Revenue Procedure 2007-44, if more than one plan is maintained by members of a controlled group or an affiliated service group, an election may be made so that the five-year remedial amendment cycle applicable to all plans in the controlled group or affiliated service group is Cycle A. Notice 2016-3 confirms that plan sponsors in controlled groups and affiliated service groups that maintain more than one plan may submit determination letter applications during the Cycle A submission period beginning on Feb. 1, 2016, and ending on Jan. 31, 2017, as long as a prior Cycle A election was made by Jan. 31, 2012.

Expiration Dates on Determination Letters Issued Prior to Jan. 4, 2016

Revenue Procedure 2007-44 provides that the IRS may extend the expiration dates in determination letters in appropriate circumstances through published guidance. Under Notice 2016-03, expiration dates in determination letters issued prior to Jan. 4, 2016, may be disregarded. The IRS has indicated that future guidance will clarify the extent to which a determination letter may be relied upon after a subsequent change in the law or a plan amendment.

Adoption Period and Determination Letter Submission Period Extended for Certain Adopters of Pre-Approved Defined Contribution Plans

The deadline for a plan sponsor to adopt a current defined contribution pre-approved plan (and, if permissible, apply for a determination letter) is extended from Apr. 30, 2016, to Apr. 30, 2017. A “current defined contribution pre-approved plan” is a pre-approved plan that was approved based on the 2010 IRS Cumulative List.

This extension applies to any defined contribution pre-approved plan initially adopted on or after Jan. 1, 2016, but it does not apply to a plan that is adopted as a modification and restatement of a defined contribution pre-approved plan that was maintained by the employer prior to Jan. 1, 2016. A plan sponsor who adopted a defined contribution pre-approved plan prior to Jan. 1, 2016, still has until Apr. 30, 2016, to adopt a modification and restatement of its plan within the current six-year remedial amendment cycle and, if permissible, apply for a determination letter.

With this extension of time, the IRS intends to facilitate the conversion of existing individually designed plans to current defined contribution pre-approved plans.

Action Steps for Plan Sponsors

- Plan sponsors who are permitted to file on cycle during Cycle E (ending Jan. 31, 2016) or Cycle A (ending Jan. 31, 2017) should submit their plans to the IRS to obtain determination letters. This includes plans in a controlled group where an election has been made to file all plans during Cycle A.
Plan sponsors should ensure that all amendments required in connection with determination letters are executed timely.

Sponsors of individually designed defined contribution plans should assess whether they wish to restate their plans in a pre-approved form.

Sponsors of individually designed plans that remain individually designed should request that counsel assess plan document compliance annually to ensure that plan documents remain compliant.

Sponsors of individually designed plans should take advantage of opportunities to request updated determination letters as permitted in future IRS guidance.

IRS Survey on Elimination of the Five-Year Remedial Amendment Determination Letter Program

The IRS Advisory Committee on Tax Exempt and Government Entities (ACT) is conducting a survey to compile information regarding the impact of the elimination of the five-year remedial amendment determination letter program. The survey will provide the IRS with feedback which may be helpful with respect to the release of future IRS guidance regarding this issue. Please follow the link to take the survey.

If you have any questions or would like assistance with any of the matters discussed in this Alert, contact any member of our Employee Benefits and Executive Compensation Practice Group.

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