



Employee Benefits & Executive Compensation ADVISORY ■

NOVEMBER 21, 2016

Qualified Retirement Plan Amendments and IRS Filings – Upcoming Deadlines

This advisory reminds plan sponsors of deadlines for amending qualified retirement plans and for submitting certain plans to the IRS for a determination letter, as well as other significant changes to the determination letter process.

In some years, qualified retirement plans must adopt required amendments before certain deadlines. Although it appears that for most plans no such amendments are required in 2016, plan sponsors that have added optional features to a retirement plan during 2016 (e.g., a plan loan feature) must ensure that the associated “discretionary” amendments are signed no later than December 31, 2016 (for calendar-year plans). If you have made any discretionary amendments, you should take some time to make sure they have been formally adopted by the end of the year.

Additionally, some cash balance and hybrid plans may still need to be amended by December 31, 2016, to comply with previously issued IRS guidance regarding market rates of return and other IRS guidance. While many plan sponsors have already adopted these amendments, please consult your plan’s legal representative if you sponsor such a plan to determine whether any additional amendments are required.

Changes to the Determination Letter Program

Cycle A Filings Due by January 31, 2017

The IRS has announced the end of the regular determination letter cycle filing program for individually designed qualified retirement plans. There is, however, an exception to this for plan sponsors whose EIN ends in 1 or 6, (formerly referred to as a “Cycle A” plan). These plan sponsors will have one final chance to apply for a cycle determination letter under the old program.

In order to file for a determination letter, Cycle A plan sponsors will need to amend and restate their plans and submit them to the IRS by January 31, 2017. In connection with the submission, plan sponsors should review IRS Notice 2015-84 (the “Cumulative List of Changes in Plan Qualification Requirements”) and ensure that any required amendments are included in the plan document.

Determination Letters Going Forward

After the current Cycle A deadline, the five-year amendment cycle for individually designed plans will end and the IRS will no longer issue determination letters, with a few exceptions such as when a new plan is put into place or when a plan is terminated. Additionally, the Employee Plans Compliance Resolution System (EPCRS) has been amended to provide that, after January 1, 2017, plan sponsors will no longer be able to apply for a determination letter as part of a submission under the Voluntary Compliance Program.

Going forward, the IRS will assist plan sponsors in complying with legal requirements in the following ways:

- Plan sponsors may rely on existing determination letters for provisions that have not been amended or affected by a change in law.
- The IRS will publish a list of required amendments each year after October 1. Plan sponsors must generally adopt any required amendments by the second calendar year following the year in which the Required Amendment list is published.

With the end of the determination letter process, plan sponsors and their legal advisors will need to take a more proactive approach to maintaining documentary compliance.

Pre-Approved Plans

The foregoing discussion focused on individually designed qualified retirement plans. Master and prototype plans and volume submitter plans ("pre-approved plans") are generally required to be updated and restated on a six-year cycle. The changes to the determination letter program for individually designed plans do not generally affect pre-approved plans, which will still continue to be updated on the six-year cycle.

The most recent cycle ended on April 30, 2016, by which date plan sponsors needed to sign and adopt restated pre-approved plan documents and file for an IRS determination letter, if appropriate. If you are a plan sponsor of a pre-approved defined contribution plan that was in effect before January 1, 2016, and you missed the April 30, 2016, deadline, the IRS allows you to correct the missed deadline through the filing of a voluntary correction under EPCRS. There is a special opportunity where the normal compliance fee is reduced by 50 percent if the failure to meet the April 30, 2016, deadline is the only failure and the voluntary compliance filing is sent to the IRS by April 29, 2017.

The IRS has also extended the deadline from April 30, 2016, to April 30, 2017, for employers to adopt or convert an individually designed plan to a pre-approved plan and apply for a determination letter for any defined contribution pre-approved plan adopted on or after January 1, 2016.

Conclusion

Although there are not many significant amendments required for qualified plans in 2016, the changes described above are expected to have a significant impact on plan compliance in the future. The end of the year provides an opportunity for plan sponsors to review their qualified retirement plans and prepare for upcoming filing deadlines and other changes. Please do not hesitate to contact your Alston & Bird attorney if we can assist you with proper filing procedures for your qualified retirement plan and to discuss any plan amendments and applicable deadlines.

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If you have any questions or would like additional information, please contact your Alston & Bird attorney or any of the following:

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