

IRS Provides Update on Pending Guidance on the Determination Letter Program

KEVIN E. NOLT

On January 4, 2016, the Internal Revenue Service (“IRS”) issued [Notice 2016-03](#), which provides that the Department of Treasury (“Treasury”) and the IRS will issue guidance in anticipation of the elimination, effective January 1, 2017, of the five-year remedial amendment cycle system for individually designed retirement plans under the IRS determination letter program. As described below, the future guidance will address the following: (1) Cycle A elections by controlled groups, (2) determination letter expiration dates and (3) the extension of deadlines for certain defined contribution pre-approved plans. Plan sponsors may rely on the guidance in Notice 2016-03 until further guidance is issued.

Background

On July 21, 2015, the IRS released [Announcement 2015-19](#), announcing a significant curtailment of the IRS determination letter program for individually designed retirement plans. The changes to the program are the result of the significant budget and time constraints facing the IRS. Announcement 2015-19 explains that the IRS will eliminate the staggered five-year remedial amendment cycle (which permits plan sponsors to apply for determination letters once every five years) for individually designed plans, effective January 1, 2017. The last cycle permitted to file under the current program is the Cycle A submission period beginning February 1, 2016 and ending January 31, 2017. This is significant for plan sponsors, who rely on favorable determination letters to confirm that their plans maintain tax-qualified status under Section 401(a) of the Internal Revenue Code (the “Code”) and the related trusts are tax exempt under Section 501(a) of the Code. Announcement 2015-19 also provides that the scope of the determination letter program for individually designed retirement plans will be limited to initial plan qualification, qualification upon plan termination, and certain other limited circumstances. As of July 21, 2015, the IRS ceased accepting off-cycle determination letter applications (as defined in [Section 14 of Revenue Procedure 2007-44](#)), except with respect to new and terminating plans.

In light of these changes to the five-year remedial amendment cycle and the determination letter program, the Treasury and the IRS will be issuing additional guidance to plan sponsors and plan administrators to address these significant changes. Notice 2016-03 is the first guidance since Announcement 2015-19 and provides the following clarifications on the IRS determination letter program.

Cycle A Elections by Controlled Groups

Under the current provisions applicable to the five-year remedial amendment cycles, members of a controlled group or affiliated service group could elect to file their plans under Cycle A, provided that they file applications for all plans in their controlled or affiliated service group and that the election is made by the end of the applicable Cycle A period. In Notice 2016-03, however, the IRS stated that only controlled and affiliated service groups that had previously made a Cycle A election would be able to make that election for this Cycle A. This means that any controlled or affiliated service group that had not previously made a Cycle A election is not permitted to utilize the election now in order to submit their plans for a determination letter in Cycle A.

Expiration Dates on Previous Determination Letters

Notice 2016-03 also provides that expiration dates included in determination letters issued prior to January 4, 2016, no longer apply. In response to comments submitted with respect to Announcement 2015-19, the Treasury and the IRS intend to issue guidance with respect to the status of existing expiration dates on determination letters issued prior to January 4, 2016. [Revenue Procedure 2016-6](#), which is the annual Revenue Procedure addressing the rules and procedures of the IRS determination letter program, was updated to reflect Announcement 2015-19 and Notice 2016-03.

Deadline to Adopt Pre-Approved Defined Contribution Plans Extended

Plan sponsors of pre-approved defined contribution plans have until April 30, 2016, to adopt a current defined contribution pre-approved plan and submit it for a determination letter. The Notice extends this deadline to April 30, 2017, for a plan sponsor who first adopts a pre-approved defined contribution plan on or after January 1, 2016. This extension is designed to facilitate a plan sponsor's ability to convert an existing individually designed defined contribution plan into a current pre-approved defined contribution plan. Plan sponsors who had previously adopted a pre-approved plan prior to January 1, 2016, are still subject to the April 30, 2016, adoption and determination letter filing deadline. The IRS has not issued guidance on the due date for adoption of pre-approved defined benefit plans but future guidance from the IRS on these plans should address the deadline.

Potential Next Steps

Plan sponsors of individually designed retirement plans should watch for this future guidance so that they can make timely decisions with respect to their plans. One option may include maintaining their individually designed plan documents and conducting periodic reviews of the plan documents to ensure that all required changes were timely made and to examine any other plan amendments. Any document defects uncovered during such periodic reviews may be submitted to the IRS's Voluntary Correction Program for remediation. A second option may include restating their plans on a pre-approved defined contribution plan document by the April 30, 2017 deadline (or such other deadline applicable to pre-approved defined benefit plans) if their plans can fit within the confines of such pre-approved documents (but for some plans this may not be desirable or feasible depending on the type of plan and its complexity).

The effects of these changes have not been fully realized and there remains outstanding questions requiring further guidance and consideration. We will provide updates on such guidance as it is issued by the IRS or the Treasury. If you have questions, please contact the author of this article or the Trucker Huss attorney with whom you normally work.

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