

CLIENT MEMORANDUM

IRS Announces Significant Changes to Determination Letter Program

July 22, 2015

AUTHORS

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On July 21, 2015, the Internal Revenue Service (the “IRS”) issued [Announcement 2015-19](#) (the “Announcement”) making significant changes to the employee plan determination letter program for individually designed qualified retirement plans. These changes limit a plan sponsor’s ability to obtain IRS review and assurance as to a plan’s compliance with the formal qualification requirements of the Internal Revenue Code, and will therefore require employers with individually designed plans to strengthen their independent review and monitoring of the plan for documentary compliance. In addition to the announced changes, the IRS requests comments by October 1, 2015 on certain specific issues, such as the adoption of interim plan amendments required to comply with the enactment of future laws.

Determination Letter Program Curtailed

Prior to the changes set forth in the Announcement, sponsors of individually designed retirement plans could request and obtain determination letters from the IRS, generally based on a staggered five-year remedial amendment cycle. Due to the need to redirect its limited resources, the IRS has announced the following changes to the determination letter program for individually designed plans:

- Effective July 21, 2015, the IRS will no longer accept off-cycle determination letter applications except for requests relating to a plan’s initial qualification or termination.

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- Effective January 1, 2017, the IRS will no longer accept determination letter applications based on the five-year remedial amendment cycles. However, sponsors of Cycle A plans (generally, plan sponsors whose EINs end in the number one or six) may still submit applications during the period beginning February 1, 2016 and ending January 31, 2017.
- Effective January 1, 2017, sponsors of individually designed plans will be permitted to submit a determination letter application (a) for a plan's initial plan qualification, (b) for qualification upon plan termination and (c) in certain other limited circumstances that will be identified in future guidance issued by the IRS.

Transition Period

Prior to the elimination of the five-year remedial amendment cycle, the remedial amendment period for correcting disqualifying plan provisions extended to the last day of a plan's applicable remedial amendment cycle (*i.e.*, the five-year determination letter cycle). Due to the elimination of the five-year remedial amendment cycle, the extension of the remedial amendment period will no longer be available after December 31, 2016. However, the IRS intends to extend the remedial amendment period for all individually designed plans until a date no earlier than December 31, 2017.

Implications

Under the new determination letter program, an employer that sponsors an individually designed plan will be prone to greater risk relating to the plan's ongoing qualification, *e.g.*, following the IRS's issuance of the initial qualification letter. It is recommended that plan sponsors strengthen regular review and monitoring procedures for their plans, including adopting required and optional amendments within prescribed time limits. Failure to maintain a plan's qualified status could result in costly sanctions and loss of favorable tax status.

The changes adopted by the IRS will also potentially affect the diligence process in corporate transactions where a target company maintains an individually designed plan. For instance, a purchaser that assumes the target company's plan or allows rollovers from the plan may want additional assurance from the seller regarding the plan's qualification in the absence of a recently issued determination letter.

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If you have any questions about this memorandum or would like additional information, please contact Peter J. Allman (212 728-8101, pallman@willkie.com), Peter E. Haller (212 728-8271, phaller@willkie.com), Jennifer Kim (212 728-8152, jkim1@willkie.com) or the Willkie attorney with whom you regularly work.

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