



IRS Changes Determination Letter Procedures and Timing of Plan Amendments

Background

For the last ten years, plan sponsors of individually designed retirement plans were generally required to obtain an IRS determination that a plan was tax qualified once every five years. The five year period was generally based on the plan sponsor's employer identification number and was referred to as the plan's Remedial Amendment Cycle ("RAC"). In addition, plan sponsors had to make conforming plan amendments by the end of their five-year RAC cycle.

The IRS, in Rev. Proc. 2016-37, prescribes a new system, effective January 1, 2017. ***Note that these new procedures do not apply to IRS pre-approved prototype and volume submitter plans.***

IRS Determination Letters

Under the new system, a plan sponsor may only request a determination letter if:

- (1) The plan has never received an IRS determination letter; or
- (2) The plan is being terminated; or
- (3) If the IRS provides a special exception, based on the need for rulings in certain areas and its ability to process additional applications.

Required Plan Amendments

The timing of required plan amendments will generally be based on a Required Amendments List which the IRS will publish on or after October 1 of each year, beginning October 1, 2016. Generally, plan sponsors must adopt the amendment by the end of the second calendar year following the year the Required Amendments List is published, regardless of the plan year of the plan or the tax year of the plan sponsor. For example, if a Required Amendment is published in 2016, the plan amendment must be adopted by not later than December 31, 2018.

The IRS has indicated that discretionary amendments must continue to be adopted by the end of the plan year in which amendment is operationally effective, as provided in Rev. Proc. 2007-44.

The IRS also notes that Rev. Proc. 2016-37 does not change a plan's operational compliance requirements. Therefore, individually designed plans need to operate their plans in compliance with any change in qualification requirements from the effective date of the change, regardless of the Required Amendment Date. Therefore, the IRS will also provide a new annual "Operational Compliance List" each calendar year to describe changes in qualification requirements that are effective during a calendar year.

Comments

Rev. Proc. 2016-37 does not address a number of issues, such as the use of determination letters in audits, rollovers, mergers and acquisitions and the IRS's Employee Plans Compliance Resolution System. We hope that additional clarifying transitional guidance will later be provided.

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