

Streamlined IRS Operations to Limit Determination Letters

Informal conference announcements suggest that significant changes are in store for how the IRS will review and issue determination letters for individually designed plans after 2016. All indications are that these plans will be able to obtain IRS review upon initial adoption and at plan termination, but not for periods in between, other than in certain yet-to-be-revealed special circumstances.

Background

Sponsors of qualified retirement plans can request an IRS determination on whether the form of their plan (plan and trust documents) satisfies all of the various mandated requirements for favorable tax treatment under the Code. Obtaining a favorable determination letter from the IRS helps ensure that document errors can be corrected and disqualification can be averted.

In 2005, IRS revised their operating procedures for reviewing plans. Under the current system, individually designed plans have remedial amendment “cycles” every five years. Governmental plans and multiemployer plans are assigned to specific cycles, and a number of specialized rules for controlled groups are available. Plan sponsors who submit IRS determination letter requests “on-cycle” (during the last year of their remedial amendment cycle) are given higher priority than those who file “off-cycle.” Pre-approved plans (such as Master and Prototype and Volume Submitter plans) have a six-year remedial amendment cycle with defined benefit and defined contribution plans each subject to different cycle end dates.

Information about the various IRS determination letter programs and the benefits of obtaining a letter are described on IRS’ website in [What is a favorable determination letter?](#).

Fewer Determination Letters from Leaner IRS

In response to budgetary cuts that have decreased IRS’ workforce, the agency has informally stated that it plans to refine its current determination letter program. According to announcements at recent benefits conferences, the IRS may stop reviewing most amendments



to individually designed plans (other than those associated with plan termination) beginning in 2017. It does not appear that Master and Prototype and Volume Submitter plans would be affected. The agency would continue to review new individually designed plans and plan terminations, and apparently some select situations during the intervening period. The types of changes to be reviewed in any particular year would be announced in advance for each year.

Comment. Speakers haven't shared information on what types of amendments (other than plan termination) would make a plan sponsor of an individually designed plan eligible to request a determination letter.

Under the revised paradigm, plans would still need to make interim amendments to reflect changes in the law and amendments reflecting discretionary plan design decisions. IRS will soon be formally announcing the change and asking for comments on what changes will be needed to transition smoothly away from the current system of filing in 5-year cycles. It is not clear what protections will be offered for plans with documentary defects found in an audit and whether some expanded voluntary correction program will be available for missed or flawed amendments.

In Closing

Plan sponsors may initially think that this change will mean reduced government involvement in their plan operations. However, this change does not mean that the IRS will curtail its plan audit activity. Also to be determined is the impact that this change will have on a plan that seeks a determination letter on plan termination sometime in the future.

Authors

Marjorie Martin, FSPA, EA, MAAA
Fred Farkash, CEBS, Fellow-ISCEBS

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