WINSTON & STRAWN LLP

BLOG

Reminder to File Determination Letter Applications

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Every five years plan sponsors of individually designed retirement plans should (it is not an absolute requirement) submit applications for determination letters under the staggered system of five-year cycles (Cycles A–E) established by the IRS. The purpose of this five-year program is for the IRS to review the plan for certain plan qualification requirements and ultimately get a "thumbs up" from the IRS as to the qualified status of the plan.

Generally, the cycle that applies to an individually designed plan depends on the last digit of the sponsoring employer's identification number (EIN). **Plans whose plan sponsor's EIN ends in a 1 or a 6 are subject to Cycle A and must be submitted to the IRS no later than January 31, 2017**. In addition, as an exception to the general rule, plan sponsors who are members of a controlled group or affiliated service group may elect Cycle A as their remedial amendment cycle regardless of the last digit of their EIN. Such an election must be made by all members of the controlled or affiliated service group (the parent company may elect for all members) and must be disclosed in the determination letter application.

Citing the need of the IRS to more efficiently direct its limited resources, following this next Cycle A, the IRS will eliminate the staggered five-year determination letter cycles for individually designed plans and will limit the scope of the determination letter program for individually designed plans to initial plan qualification and qualification upon plan termination. Without the benefit of the five-year program, plan sponsors will bear a significantly increased burden of demonstrating that their plans remain tax qualified. This creates a host of issues for plan sponsors. For example, plan sponsors who amend their plans will not be able to receive a favorable determination letter from the IRS approving the changes. In the transactional context, we expect buyers will more frequently insist that a plan be terminated prior to closing in order to avoid uncertainties and risks associated with such plans.

Due to this development, plan sponsors and fiduciaries who oversee individually designed plans will need to be exceedingly diligent in their efforts to ensure that all required amendments are timely adopted and that the content of all such amendments meet the letter of the law. Absent favorable guidance from the IRS, plan sponsors of individually designed plans may wish to consider moving to pre-approved plan documents to the extent their plan design and business needs allow for it.

Stay tuned for further developments in the IRS approval process.

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