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IRS Expands Determination Letter Program For Merged And Hybrid Plans

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The IRS announced that it will expand the determination letter program for individually designed tax-qualified statutory hybrid plans and merged plans as of Sept. 1, 2019, per Rev. Proc. 2019-20.

Determination letter applications will be accepted by the IRS for individually designed merged plans on an ongoing basis beginning on Sept. 1, 2019, and for individually designed statutory hybrid plans during the 12-month period beginning on Sept. 1, 2019, and ending on Aug. 31, 2020 (Hybrid Plan Submission Period). The requirements for determination letter applications set forth in Rev. Proc. 2019-4 (and its annual successors) and Rev. Proc. 2016-37 generally apply to submissions made for statutory hybrid plans and merged plans.

Background

In Rev. Proc. 2016-37, the IRS indicated that effective Jan. 1, 2017, the plan sponsor of an individually designed tax-qualified retirement plan may, in general, only submit a determination letter application for initial plan qualification and for qualification upon plan termination. The IRS also indicated that each year it would consider whether to accept determination letter applications for individually designed plans under certain circumstances other than initial qualification and qualification upon plan termination. The IRS requested comments on the potential expansion of the scope of the determination letter program in Notice 2018-24 and has now expanded the determination letter program in Rev. Proc. 2019-20.

Why Is It Important to Have a 'Current' Favorable Determination Letter?

Although not required, a favorable determination letter provides the sponsor of an individually designed tax-qualified retirement plan the ability to rely on the plan's qualified status under Internal Revenue Code Section 401(a) and the exempt status of the plan's trust under Code Section 501(a). If a plan is operated in accordance with the terms of a compliant document that has a favorable determination letter, the plan will satisfy the law in terms of operation. In such case: (1) the employer can deduct contributions made to the plan, up to applicable limits; (2) plan participants can defer income taxes on pre-tax amounts contributed to the plan; and (3) contributions to the plan generally grow tax-deferred until distributed.

Plan auditors routinely request the current favorable determination letter in connection with the annual plan audit (if applicable) of any individually designed tax-qualified retirement plan. Also, when a transaction occurs, the acquiring entity requests the favorable determination letter for any individually designed tax-qualified retirement plan of the target entity.
Expansion of Determination Letter Program for Hybrid Plans and Merged Plans

An individually designed statutory hybrid plan is a type of defined benefit plan (described in Treasury Reg. Section 1.411(a)(13)-1(d)(5)) which is often referred to as a "cash balance plan" or a "pension equity plan." A determination letter application may be submitted to the IRS for an individually designed statutory hybrid plan during the Hybrid Plan Submission Period. The IRS review of statutory hybrid plans submitted during the Hybrid Plan Submission Period will be based on the 2017 Required Amendments List (Notice 2017-72) and all Required Amendments Lists and Cumulative Lists issued prior to 2016.

A merged plan is a plan that results from the merger or consolidation of two or more plans into a single, individually designed plan pursuant to a plan merger. For this purpose, a plan merger combines two or more plans maintained by previously unrelated entities into a single, individually designed plan and occurs in connection with a corporate merger, acquisition or other similar business transaction among unrelated entities that each maintained its own plan or plans prior to the plan merger.

A determination letter application may be submitted to the IRS for an individually designed merged plan if: (1) the date of the plan merger is no later than the last day of the first plan year that begins after the plan year that includes the date of the corporate merger, acquisition or other similar business transaction between the unrelated entities; and (2) a determination letter application for the merged plan is submitted within a period beginning on the date of the plan merger and ending on the last day of the first plan year of the merged plan that begins after the date of the plan merger (the "Merged Plan Submission Period"). The IRS review of a merged plan submitted during a Merged Plan Submission Period will be based on the Required Amendments List that was issued during the second full calendar year preceding the submission of the determination letter application, as well as all previously issued Required Amendments Lists and Cumulative Lists.

Under the new guidance, a plan sponsor that applies for a determination letter for a statutory hybrid plan or a merged plan in accordance with Rev. Proc. 2019-20 must: (1) amend the plan to comply with qualification requirements; (2) pay any applicable sanction amount; and (3) enter into a closing agreement with the IRS. In addition, reduced special sanctions may apply under certain circumstances described in Rev. Proc. 2019-20.

What Should Plan Sponsors Do?

A sponsor of an individually designed tax-qualified retirement plan should consider consulting its employee benefits counsel:

- if it believes that the plan may be submitted as described above during the Hybrid Plan Submission Period or a Merged Plan Submission Period.
- To ensure that any opportunity to request a current determination letter for a plan is timely, as the new rules are very specific regarding the determination letter submissions permitted under Rev. Proc. 2019-20 for both statutory hybrid plans and merged plans.

To obtain more information regarding this alert, contact the Barnes & Thornburg attorney with whom you work or Lori Shannon at 312-214-5664 or lori.shannon@btlaw.com.