



American Institute of CPAs
1455 Pennsylvania Avenue, NW
Washington, DC 20004-1081

November 23, 2015

Internal Revenue Service
CC: PA: LPD: PR (Announcement 2015-19)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, DC 20004

RE: Announcement 2015-19 – Revisions to the Employee Plans Determination Letter Program

Dear Sir or Madam:

The American Institute of CPAs (AICPA) submits the comments below in response to Announcement 2015-19: Revisions to the Employee Plans Determination Letter Program (“the Announcement”).

This letter was developed by members of the AICPA Employee Benefits Tax Technical Resource Panel and approved by the Tax Executive Committee.

The AICPA is the world’s largest member association representing the accounting profession, with more than 412,000 members in 144 countries and a history of serving the public interest since 1887. Our members advise clients on federal, state and international tax matters and prepare income and other tax returns for millions of Americans. Our members provide services to individuals, not-for-profit organizations, small and medium-sized businesses, as well as America’s largest businesses.

Background

The Announcement provides details on proposed changes to the Internal Revenue Service (IRS) employee plans determination letter program. The purpose of the determination letter program is to provide assurance to plan sponsors, through the issuance of a favorable determination letter that a qualified retirement plan is in compliance with the tax qualification requirements of section 401(a)¹ of the Internal Revenue Code (IRC or “Code”). If a plan is deemed qualified, plan sponsors and participants are assured of the following tax benefits:

- a. Employer receives a current tax deduction in the amount of the contribution made to the plan (up to stated limitations)

¹ All section references in this letter are to the Internal Revenue Code of 1986, as amended, or the Treasury regulations promulgated thereunder.

- b. Plan participants can defer tax on the amount contributed to the plan
- c. Tax-free growth on the contributions until distributed from the plan

Determination letters are issued by the IRS upon the request of qualified retirement plan sponsors, generally upon establishment and termination of a qualified retirement plan. Additionally, plan sponsors request determination letters when there are changes in the law that could have an effect on the plan. In order to inform plan sponsors of law changes, the IRS publishes, on an annual basis, a Cumulative List of Changes in Plan Qualification Requirements (“Cumulative List”). The determination letter requests that are based on law changes indicated in the Cumulative List are known as interim determination letter requests. Plan sponsors are then permitted to file interim determination letter requests based on the listed changes during the determination letter review process for applications filed during a 12-month submission period.

In an effort to coordinate the receipt of the high volume of interim determination letter requests, the IRS established a 5-year remedial amendment filing system.² The system provides that an individually designed plan’s (IDP) determination letter filing due date is based on the employer identification number (EIN) of the plan’s sponsor. An IDP refers to a retirement plan that meets the specific needs of a single employer or multi-employer group but has not yet been approved by the IRS. Under this system, sponsors of IDPs are generally permitted to apply for a determination letter once every 5 years. If a determination letter application is filed with the IRS anytime other than during the last 12-month period of a plan’s remedial amendment cycle, the application is considered filed off-cycle.³

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Due to their limited resources, beginning January 2, 2017, the IRS will eliminate the staggered 5-year remedial amendment cycles for IDPs. Accordingly, the IRS will no longer accept determination letter applications based on 5-year remedial amendment cycles.

Individually designed plans can continue to submit applications for determination letters under the following circumstances:

- a. Sponsors of Cycle A plans, described in section 9.03 of Revenue Procedure 2007-44 may continue to submit determination letter applications.
- b. During initial plan qualification on Form 5300, *Application for Determination for Employee Benefit Plan*
- c. Qualification upon plan termination

² Section 410(b) of the IRC provides a remedial amendment period to allow retroactive amendment of a plan in order to comply with the qualification requirements of the IRC.

³ Revenue Procedure 2007-44, section 14.01.

Recommendations

The AICPA provides the following comments and recommendations as requested in the Announcement:

1. What changes should be made to the remedial amendment period that would otherwise apply to IDPs under § 401(b)?

The AICPA recommends that the IRS continue to provide the Individually Designed Plan Program (“IDP Program”) with an increased remedial amendment period – such as 8 or 10 years (versus the current 5 year period). We believe that a longer cycle period is mutually beneficial to both the IRS and plan sponsors. Plan sponsors will still receive the assurance, in the form of a favorable determination letter, that their plan documents have timely adopted all required plan amendments. Additionally, the IRS will benefit from a reduced workload while receiving assurance that plan sponsors are properly updating their plans.

The AICPA believes the IDP Program is a necessary element to a stable private pension system. Plans using individually designed documents are typically larger plans, with more risk of noncompliance than those maintained in the Preapproved Plan Program (Pre-approved plans refer to either Master and Prototype (M&P) or Volume Submitter (VS) plans). Plan document requirements have become more complex and the cost to maintain plans within the programs for M&P as well as VS has increased.

2. In view of the changes being made to the determination letter program, what additional consideration should be taken into account in connection with the current interim amendment requirement?

The AICPA recommends that the U.S. Department of the Treasury (“Treasury”) and the IRS develop a defined process to provide effective model remedial amendments for plan sponsors to adopt.

Once the IRS no longer accepts applications for determination letters for IDPs under the 5-year remedial amendment cycle, adopters of IDPs may accumulate years of operational and remedial amendments related to audits, acquisitions, and corporate mergers. The AICPA suggests revising the Cumulative List process, as defined in Rev. Proc. 2007-44, in order to associate a model amendment that plan sponsors can adopt with complete reliance. Stakeholders (e.g., independent CPA firms that audit plans) need the ability to rely on the plan qualification of the document; this guidance for the auditors is crucial to the stability of the ongoing private pension system.

3. What guidance should be issued to assist plan sponsors that wish to convert an individually designed plan into a pre-approved plan?

Plan sponsors will need guidance focused on their need for reliance regarding the qualified status of their plan document and its subsequent operation. The guidance will help ensure

that the private pension system remains stable and plan sponsors will continue to have confidence when communicating with their employees about the plan.

The elimination of the IDP Program will create a void in a plan sponsor's knowledge that the form of its plan document satisfies one of the key tenants of a qualified retirement plan. After the successful implementation of the Preapproved Plan Program which followed the Pattern Plan Program, some plan sponsors continued to maintain IDPs typically due to the complexity of the plan design.

The AICPA recommends the following:

- a. Provide additional guidance related to an individually designed plan's conversion to a pre-approved volume submitter or prototype plan. The guidance should specifically address a plan sponsor's needs regarding confirmation that its plan satisfies all the plan document requirements prior to adoption of a volume submitter or prototype plan.
- b. Provide guidance, prior to the abandonment of the Individually Designed Program, related to the pre-approved volume submitter or prototype plan program to allow for greater flexibility of the benefits, rights and features that are typically maintained within an IDP. These features include exclusion of certain classes of employees from eligibility, non-custom profit sharing formulas that allow for class exclusions of employees provided the related non-discrimination testing such as section 410(b) are passed and other plan design options unique to IDPs. Expansion of the features within the pre-approved plans will reduce the amount of individually designed plans required.
- c. Provide guidance that further clarifies what constitutes a "new plan." For instance, when a plan sponsor digresses from the pre-approved word-for-word adoption agreement, the plan document will become an IDP for purposes of qualification requiring a submission for determination. Clarification is needed to determine if those changes are eligible for submission for qualification as a "new plan" for purposes of Announcement 2015-19.
- d. Provide additional guidance related to issues that arise when a plan or plan sponsor merges one plan into another. The guidance should include information regarding the proper documentation and amendments, including information on the adoption of required benefits rights and features amendments for multiple groups of employees from past mergers.
- e. Create a streamlined program to convert to a new volume submitter program to bridge the gap from an individually designed program to volume submitter program. This would likely need to be part of expanding the volume submitter program.

4. **What changes should be made to other IRS programs to facilitate the changes described in this announcement, including revisions to the Employee Plans Compliance Resolution System set forth in Rev. Proc. 2013-12, 2013-4 I.R.B. 313, as modified by Rev. Proc. 2015-27, 2015-16 I.R.B. 914, and Rev. Proc. 2015-28, 2015-16 I.R.B. 920?**
- a. Either eliminate the Employee Plans Compliance Resolution System (EPCRS) requirement that a plan sponsor submit certain corrective amendments for a determination letter or provide an exception to the determination letter program to permit plan sponsors to apply for a determination letter in connection with an EPCRS matter.
 - b. Clarify EPCRS to provide assurance that the initial determination letter issued to a plan sponsor with respect to an individually designed plan will constitute a Favorable Letter as EPCRS defines that term.

Conclusion

The AICPA strongly believes that the determination letter program is a cornerstone to a stable private pension system. The program was adopted many years ago at a time when plans were less complex than they are today.

We understand the need to consolidate IRS resources for proper operation of the Employee Benefit Plans Division and have taken that into account when developing our recommendations.

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We appreciate the opportunity to present these comments. If you have any questions, please contact me at (801) 523-1051 or tlewis@sisna.com; or Kelly Davis, Chair, Employee Benefits Tax Technical Resource Panel, at (602) 604-3526 or Kelly.davis@claconnect.com; or Kristin Esposito, AICPA Senior Technical Manager – Tax Advocacy, at (202) 434-9241 or kesposito@aicpa.org.

Sincerely,



Troy K. Lewis, CPA
Chair, Tax Executive Committee

cc: Ms. Sunita B. Lough, Commissioner, Tax Exempt and Governmental Entities Division, Internal Revenue Service
Mr. Robert S. Choi, Director, Employee Plans, Internal Revenue Service
Mr. Louis J. Leslie, Senior Technical Advisor, Employee Plans, Internal Revenue Service