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Groom Urges IRS to Expand Determination Letter Program

The IRS determination letter program for individually designed retirement plans was revised, effective January 1, 2017, to dramatically limit when a plan could seek a determination on its tax-qualified status. Specifically, a plan may now seek a determination letter only for its initial qualification, for qualification on the plan's termination, and other circumstances identified in future guidance. To date, the Treasury and IRS have not identified any other circumstances which allow a plan to seek a new determination letter, although IRS said it would consider them each year.

In Notice 2018-24 (April 6, 2018), the Treasury Department and IRS requested comments on the potential expansion of the determination letter program for individually designed plans during 2019. As part of its commitment to annually review the scope of the program, IRS sought comments on the types of plans that should be allowed to request a determination letter as well as specific issues for those plans that would justify the need for review.

Groom recently took the IRS up on its invitation, submitting two letters recommending consideration of the following plans as applicants for updated determination letters:

- Plans with a cash balance or similar benefit formula whose last determination letter was before the effective date of the final IRS hybrid plan regulations.
- Plans that address income replacement and inflationary pressures through adoption of a variable annuity feature.
- Traditional pension plans that convert to a cash balance-type formula.
- Plans that undergo major changes that otherwise make certain compliance testing unnecessary – such as safe harbor 401(k) plans.
- Plan changes accompanying significant workforce adjustments, such as downsizings or corporate separations.
- Corrective plan amendments submitted as part of an EPCRS submission.
- Governmental plans where there has been a significant change in the governing state or local law.

In its June 7 report, the Advisory Committee on Tax-Exempt and Government Entities made nearly a dozen recommendations in this area, including several also identified in the Groom letter. Among other additions, the Advisory Committee recommended allowing submissions after a plan has gone a long time, such as 10 to 15 years, without any updated letter, as well as for multiemployer plans and "complicated" ESOPs.

Needless to say, we don't expect the IRS to adopt many of these recommendations all at once – or even over an extended period of time. IRS officials have repeatedly noted that its staff and budget resources are still severely limited. However, it is hoped that the IRS will respond as soon as it can to allow some filings for updated letters. In the meantime, employers that want or need ongoing assurance that their plans remain tax-qualified can participate in Groom's Document Compliance Service ("DCS") program under which the firm provides a legal opinion based on the particular plan documents reviewed.

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