

Plan Document Compliance Service

The final IRS 5-year determination letter cycle for individually designed plans has ended. The abrupt pullback of this 60-year-old IRS program calls for a new approach for employers to maintain the tax-qualification of their plan documents. Such IRS qualification is essential to preserve –

- fully tax-deductible employer contributions and pre-tax participant contributions,
- tax exemption for trust investment earnings, and
- tax deferral and rollovers for employees.

Without updated IRS letters, employers and plan fiduciaries may still need documentation of IRS plan qualification to satisfy requests from, among others –

- plan auditors,
- compliance officers,
- investment managers,
- third-party administrators, and
- other parties, such as in business transactions or collective bargaining.

Building on 45-plus years of experience in the qualified plan arena, Groom has developed its Document Compliance Service (“DCS”). This new service – targeted to individually designed plans that have current IRS determination letters – builds on (1) a plan’s last “determination letter” from the IRS, (2) the IRS’ new “required amendment” lists and (3) Groom’s extensive and continuous monitoring of legal developments as they arise. The end result of this effort will be an opinion intended to confirm continued satisfaction of the IRS document requirements applicable to an employer’s plan(s).

DCS is available for tax-qualified plans of all types – including pension, cash balance, pension equity, profit sharing, 401(k), ESOP, and money purchase pension plans. And all types of plan sponsors may take advantage of the service, including corporate, tax-exempt, governmental and other entities.

Groom has designed DCS to serve as a key internal control for an organization’s plans, and to help avoid costly IRS plan document corrections. DCS also is expected to be available to support merger and acquisition activities. Groom has extensive experience in working with plan sponsors, plan fiduciaries, auditors, consultants, third-party administrators, investment managers and recordkeepers and, because of this experience, will be able to effectively collaborate with other service providers for DCS clients.

Plan Document Compliance Service - Frequently Asked Questions

1. Why should I devote resources to obtain an opinion letter for my individually designed retirement plan from Groom?

Due to the IRS' decision to significantly cut back its determination letter program, a plan sponsor's ability to get IRS "comfort" that changes to its individually designed plan will not result in the loss of its tax-advantaged status has gone away. This lack of comfort can impact a significant number of plan operations – from annual Form 5500 audits, to certain investments, to how the bankruptcy courts treat your employees' benefits under your plan. Key benefits of a Groom DCS opinion letter include:

- Supporting management's representation to plan auditors, internal tax departments, corporate compliance functions, etc., that the plan is tax-qualified.
- Supporting merger and acquisition activities if a plan sponsor is being acquired or sold by providing support for the representations relating to tax-qualified status commonly made in most mergers and acquisitions transaction documents. In addition, DCS is also available as a stand-alone support tool for mergers and acquisitions activities.
- Serving as a strong example of an "internal control" that should be viewed favorably by the IRS in the event of an audit. For example, a company's taking this step should be helpful if IRS raises questions or asserts penalties in an audit.
- Supporting participation in the various types of investment funds, such as collective investment trusts and separately managed accounts, which regularly require representation of tax-qualified status when an investment is made.
- Supporting third-party plan administration that is dependent on maintaining a tax-qualified plan.
- Supporting the tax-qualified status of plan benefits in the event of a participant or beneficiary's bankruptcy or for rollovers to other plans.
- Supporting internal corporate compliance processes that may apply to your plan.

2. Do I need an opinion letter every year?

While the decision as to when to obtain a Groom DCS opinion letter is your choice, we recommend updating your DCS opinion letter every year to provide the best protection for your plan and the participants. Completing this process on an intermittent basis will leave your plan subject to uncertainty for years in which no DCS opinion letter is obtained. Along with regular guidance that comes throughout the year from the IRS, and the annual IRS Required Amendment List, it will be important to substantiate that the Plan has retained its tax-qualified status as part of your annual Form 5500 filing.

Plan Document Compliance Service - Frequently Asked Questions (continued)

3. Who can rely on my opinion letter?

The opinion letter is issued to and may be relied on by the plan sponsor who has the obligation to maintain the tax-qualified status of the plan. Groom also has a process by which third parties may be able to rely on a DCS opinion letter at the plan sponsor's request.

4. Does the opinion letter cover all potential plan qualification issues?

No, it is designed to address the same concerns that a determination letter would cover – namely whether the form of your plan document, as amended, complies with the Internal Revenue Code. Therefore, it will not address, and is not designed to address, operational or demographic failures. For example, you still need to follow the terms of your plan in actual operations.

5. How much will the opinion letter cost?

The cost of the service is split into two pieces – the opinion letter itself and the due diligence to prepare the opinion. While each plan is unique, we anticipate that the cost of the opinion letter itself will be a flat fee.

If we already service your plan(s) and draft your various IRS-required and discretionary amendments, we expect the cost of a Groom DCS opinion letter and underlying due diligence to be in line with or less than your prior IRS determination letter application costs. If we don't regularly service your plan, you can still participate in DCS, and we will charge for review of the applicable plan documents and amendments. Due to our extensive experience in this area, we can provide an estimate of the costs, including potentially in a flat rate form, once we receive the necessary documents. For more information on necessary documents, please see Q&A 8, below.

6. What happens if an issue is discovered while reviewing the document for the opinion letter?

Groom is available to assist you should we identify a potential error. To the extent that the plan document review raises plan qualification concerns, we are happy to work with you and your other service providers to develop correction processes, whether through self-correction (if permitted under the IRS' Employee Plans Compliance Resolution System), the IRS' Voluntary Compliance Program, or through the IRS' overall closing agreement program. In any case, a correction done voluntarily is less expensive than the corrections required during an audit. We have extensive expertise in developing practical correction solutions and have worked closely and collaboratively with the IRS on these matters and therefore are ideally situated to address these concerns. If we discover a document error in our review, we will work with you to explore the possible corrective actions and if it may impact our ability to provide a Groom DCS opinion letter. If the review is done on an annual basis, it may well be possible to correct any error without difficulty.

Plan Document Compliance Service - Frequently Asked Questions (continued)

7. Why should I get a Groom Law Group opinion letter rather than an opinion letter from another law firm, auditor, or consultant?

We recognize that you may have choices in deciding where to obtain an opinion letter on the tax-qualified status of your plan.

Our Groom DCS opinions come with the experience and diligence that is unmatched based on our more than 40 years of experience dedicated to employee benefits law and working with the IRS regularly with determination letter submissions and plan document drafting. A DCS opinion reflects a reasoned and thorough analysis regarding the tax-qualified status of your plan document. For each plan review, our DCS process leverages off of the many subject matter experts in our firm and builds off our industry-leading depth and knowledge base we have utilized to the advantage of our clients for years. Few, if any, firms can match this depth of knowledge and expertise. Lastly, because of our scale and scope, we are uniquely positioned to support the plan sponsor in the event of an IRS audit.

8. What documents do I need to provide to get us started?

While the actual documents will vary, in most cases we will need the following documents:

- Your plan document that last received a determination letter
- A copy of your last IRS determination letter
- Copies of all executed and, if applicable, proposed amendments referenced in the latest determination letter
- All plan amendments adopted since your last favorable determination letter and, if available, the latest plan restatement.

We'll take it from there.