

## April 30, 2016 Deadline for Updating Many Retirement Plan Documents

The Internal Revenue Service (IRS) has established deadlines for retirement plans to be “restated” or updated for changes in the law. Although it may seem as if your retirement plan is frequently restated, the cycle for restating a pre-approved plan in its entirety is generally once every six years.

For the latest cycle, employers with pre-approved defined contribution plan documents have until April 30, 2016 to adopt a restated plan document. It's an important deadline because a plan must be updated by the deadline in order to maintain its tax-qualified status.

### **What are pre-approved plans?**

- Prototype plans, which consist of a basic plan document and an adoption agreement with elections; and
- Volume submitter plans, which consist of a specimen plan with choices of plan terms and may also have an adoption agreement with elections.

### **Which pre-approved defined contribution plans are subject to the deadline?**

- 401(k) plans, profit sharing plans and money purchase plans.

Many 401(k) and profit sharing plans are stated in pre-approved documents and, thus, must be restated by the end of April. For pre-approved volume-submitter plans in which the employer has modified the pre-approved language, the deadline to submit the plan to the IRS for a favorable determination letter (if desired) is also April 30, 2016.

Employers that use a pre-approved defined contribution plan document should contact the document provider immediately if the restatement process has not already been initiated. The April 30 deadline is fast approaching!

### **Individually-designed Plans**

Different timing applies to restatements of individually designed plans.

#### **What are individually-designed plans?**

- Individually designed plans use language that has not been pre-approved by the IRS.

The IRS previously announced the elimination of the determination letter program for individually-designed plans effective January 31, 2017. The current and final cycle is Cycle A for individually-designed plan sponsors with Employer Identification Numbers (EINs) ending in a “1” or a “6”. Cycle A plan sponsors, as well as controlled or affiliated service groups that maintain more than one plan and previously made a Cycle A election, can submit restated plans to the IRS for a favorable determination letter until January 31, 2017.

In light of the elimination of the determination letter program for individually-designed plans, plan sponsors of individually-designed plans may be considering converting to a pre-approved plan document. For individually-designed plans that convert to a defined contribution pre-approved plan on or after January 1, 2016, the IRS has provided additional time until April 30, 2017 to adopt a restatement and apply for a determination letter.

**Update on Plan Documents for ESOPs, Cash Balance Plans and 403(b) Plans**

The IRS has expanded its pre-approved program to include employee stock ownership plans (ESOPs) and cash balance plans, as well as 403(b) pre-approved plans.

ESOP and cash balance plan sponsors may be able to shift from an individually-designed plan to a pre-approved plan document if the plan provisions are within certain parameters. The pre-approved ESOP documents will likely be available for employers to adopt at the next defined contribution restatement cycle. Similarly, the pre-approved cash balance documents will likely be available for employers to adopt at the next defined benefit restatement cycle.

Employers that intend to convert to a pre-approved plan can complete Form 8905 to document their intention to transition from an individually-designed plan to a pre-approved plan. The Form 8905 must be completed before the end of the individually-designed plan's 5-year cycle. Thus, the deadline for Cycle A employers that intend to convert their individually-designed plan to a pre-approved plan is January 31, 2017.

The IRS is also in the process of approving 403(b) prototype and volume submitter plan documents. Once the IRS issues the favorable opinion or advisory letters for pre-approved 403(b) plans, an adoption period will open for employers to adopt pre-approved 403(b) plans. While the IRS does not intend to establish a determination letter program for individually-designed 403(b) plans, an employer that adopts a pre-approved 403(b) plan will generally have assurance that its plan document complies with the Internal Revenue Code Section 403(b). Thus, many schools and tax-exempt organizations that offer 403(b) plans will want to consider adopting a 403(b) pre-approved plan.

If you have any questions about this memorandum, please contact any member of our Employee Benefits and Executive Compensation Practice Group listed below.

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