



eBenefits Alert: Good News – IRS Expanding Determination Letter Process

May 3, 2019

On May 1, the IRS issued a new Revenue Procedure, Rev. Proc. 2019-20, which expands a plan sponsor's ability to get a determination letter from the IRS regarding the tax-qualified status of its qualified retirement plans. The new rules apply to individually designed plans only, not the IRS "pre-approved" form plans often provided by banks and other plan service providers. (For pre-approved plans the IRS opinion letter program remains available and is unchanged.) For employers with certain types of individually designed plans this is good news because the employers can now have greater certainty about whether their plan document satisfies the qualified plan rules.

Up until now, plan sponsors of individually designed plans could only apply for a determination letter from the IRS for new plans and for plans that are terminating. Under the new Revenue Procedure, two other types of individually designed plans can apply for a determination letter. These are "hybrid plans" (e.g., cash balance plans) and "merged plans."

For hybrid plans, the ability to apply for a determination letter is limited to a window period. The period starts on September 1, 2019 and ends on August 31, 2020, so sponsors of these plans will need to make a decision relatively soon regarding whether they want to apply. We suggest that sponsors of these plans seriously consider applying for the determination letter.

Merged plans are plans that are the result of the merger of separate plans that have been maintained by "Unrelated Entities" (employers that are not part of the same controlled group) and that are merged into one another in connection with an acquisition of one of the Unrelated Entities by the other. This occurs when the buyer in the transaction decides to assume the seller's plan, instead of having the seller's plan terminated before the transaction, and then to merge the assumed plan into its own plan. For many buyers terminating the seller's plan before the transaction is preferable to assuming the plan. The parties to the transaction have to weigh the pros and cons of termination versus assumption. But this is good news for buyers who want to assume the plan of the seller and merge that plan into their own plan, because it allows them greater certainty that the plan merger will not jeopardize the tax status of the buyer's plan.

Unlike with hybrid plans, there is no window period that applies to merged plans, so that sponsors can apply for a determination letter for a merged plan at any time on or after September 1, 2019. However, there are



some time limits on how soon the plan merger has to occur after the transaction, and how soon after that the sponsor needs to file for the determination letter.

For additional information, please contact a member of the Employment Benefits team at Gray Plant Mooty.