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IRS Further Expands Some Deadline Relief for Benefit Plans with Notice 2020-35

The Department of Treasury and Internal Revenue Service ("IRS") released Notice 2020-35 on May 28, 2020, which extends to July 15, 2020, a growing list of deadlines otherwise applicable to employee benefit plans within the jurisdiction of the IRS.

Notice 2020-35 expands on the deadline relief provided in three prior IRS notices (Notices 2020-18, 2020-20, and 2020-23). The IRS also has previously issued a joint notice with the Department of Labor ("DOL"), extending certain deadlines for group health plans and requiring all benefit plans to extend certain claims and appeal deadlines for participants, beneficiaries, and claimants. The DOL separately has issued standalone guidance extending certain relief to benefit plans for deadlines within its jurisdiction, as described in our prior blog post.

What's new for employee benefit plans?

Notice 2020-35 extends the deadline to July 15, 2020 (the "New Due Date"), for a list of Specified Time-Sensitive Actions occurring in the previously-announced Relief Period of April 1, 2020, to July 14, 2020.

The new Specified Time-Sensitive Actions applicable to employee benefit plans include:

- Implementing corrections required by any Voluntary Compliance Program compliance statement (generally required within 150 days after the issuance of a compliance statement).
- Filing of Form 5330, Return of Excise Taxes, and paying various excise taxes relating to benefit plans (for example, excise taxes resulting from prohibited transactions).
- Correcting certain underpayments or overpayments, including pension withholdings.
- Applying for single-employer pension funding waivers.
- Requesting approval of a substitute mortality table under Code section 430(h)(3)(C).
- Certifying multiemployer union pension plans' funding status, including deadlines for providing funding, funding improvement, and rehabilitation plan notices.
- Performing certain actions relating to the funding of ERISA-exempt cooperative and small employer charity pension plans (CSEC Plans) sponsored by some charities, schools, and volunteer organizations.

Notice 2020-35 also extends:

- The remedial amendment period for 403(b) plans to adopt amendments to June 30, 2020, from March 31, 2020, as previously described in Revenue Procedures 2017-18 and 2019-39.
- The deadline to July 31, 2020, for adopting a pre-approved defined benefit pension plans, submitting such a plan for a determination letter under the second six-year remedial amendment cycle, and other defect-correcting actions that would otherwise would have been required before April 30, 2020.

Affected Taxpayers. The list of Affected Taxpayers has generally been expanded to encompass persons required to perform the new Specified Time-Sensitive Actions.

Recap of prior IRS deadline relief:

Notices 2020-17, 2020-18, and 2020-20, which were released between March 18, 2020, and March 27, 2020, all provided very limited relief and only with respect to certain filing or tax payment deadlines that otherwise would have fallen on April 15, 2020:

Notice 2020-17 postponed due dates for certain federal income tax payments from April 15, 2020, until July 15, 2020.

Notice 2020-18 superseded and expanded on the relief in Notice 2020-17, permitting taxpayers to delay both return filings and tax payments otherwise due on April 15, 2020.

Notice 2020-20 extended certain relief with respect to gift and generation-skipping transfer tax payments and filings otherwise due on April 15, 2020.

Notice 2020-23, which was released on April 9, 2020, provided broader relief with respect to the deadlines for a wide variety of actions within the jurisdiction of the IRS:

Relief Period. Notice 2020-23 relief applies to certain due dates that would otherwise occur on or after April 1, 2020, and before July 15, 2020.

New Due Date. Due dates eligible for relief are generally extended to July 15, 2020.

Specified Payments and Specified Forms. Notice 2020-23 relief applies to various listed form filings and taxes that were otherwise due during the relief period.

Specified Time-Sensitive Actions. In addition to the tax filing and payment obligations that were deferred, Notice 2020-23 incorporates by reference a lengthy list of time-sensitive actions located in Revenue Procedure 2018-58 and a shorter list located in IRS regulations at 26 CFR § 301.7508A-1(c)(1)(iv) – (vi). The list in Revenue Procedure 2018-58 includes 44 items relating to employee benefit plans (which can be found in Section 8, starting on page 39). For example, this relief would permit plans to temporarily allow participants to suspend repayment of plan loans (potentially complementing similar loan relief allowed by the CARES Act).

Affected Taxpayers. For purposes of the relief in Notice 2020-23, the IRS determined that any person who would otherwise have been required to file a Specified Form, pay a Specified Payment, or perform a Specified Time-Sensitive Action during the Relief Period is treated as affected by the COVID-19 emergency and thus eligible for the deadline relief.

Could the IRS further extend deadlines in the future?

Pursuant to Section 7508A of the Internal Revenue Code, the IRS may issue guidance providing that a period of up to one year will be disregarded in determining the date by which various actions are required or permitted to be completed by persons affected by a federally-declared disaster.

For more information about IRS due date extensions, please contact a member of the Kilpatrick Townsend Employee Benefits Team.