JANUARY 5, 2016

IRS Announces Future Determination Letter Guidance in Notice 2016-03

In Notice 2016-03, the IRS provides an overview of guidance it intends to release to implement certain aspects of its decision to end the regular determination program, effective January 1, 2017, which it previously announced in Announcement 2015-19. (See this entry). Notably, employers may rely on the guidance issued in Notice 2016-03 until further guidance is issued.

Notice 2016-03 provides that:

- Controlled group members, including affiliated service group members, that maintain more than one plan may file for determination letters during the Cycle A submission period beginning February 1, 2016 and ending January 31, 2017, provided a Cycle A election was made for the prior cycle (i.e., by January 31, 2012.)
- The expiration dates of determination letters issued before January 4, 2016 are no longer operative. The IRS will issue future guidance clarifying an employer's ability to rely on a determination letter after changes in law or plan amendments.
- Employers may adopt a new pre-approved defined contribution plan (i.e., a standardized plan with adoption agreement) with a current determination letter and, if permissible, apply for a determination letter on or before April 30, 2017 (extending the prior deadline by a year). This extension is intended to allow for employers to convert from individually designed plans into pre-approved plans, which may be even more attractive to some employers in the absence of a regular determination letter program.