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IRS Considering Expanding Determination Letter Program in 2019 for Certain Individually Designed Plans

The IRS announced April 5 that it is considering opening its determination letter program again to certain types of individually designed retirement plans.

In 2016, the IRS announced that it would stop making routine qualification determinations of individually designed retirement plans under its previous five-year remedial amendment cycle program. The policy goal behind the move was to optimize reduced agency resources by encouraging plan sponsors to adopt prototype and volume submitter plans, which the IRS merged into one pre-approved plan program in 2017.

Following the close of Cycle A on January 31, 2017, the IRS now only makes determinations on individually designed plans for initial plan qualification, for qualification upon plan termination, and in certain other limited circumstances the IRS has described in specific published guidance.The IRS has left open the possibility that it may consider opening up the determination letter program in the future for certain types of individually designed plans.

In Notice 2018-24, the IRS is soliciting comments on what specific types of plans it should consider accepting for determination letters in 2019. As stated in the Notice,

“circumstances for consideration include, for example, significant law changes, new approaches to plan design, and the inability of certain types of plans to convert to pre-approved plan documents. Comments that suggest expanding the scope of the program for a particular type of plan should not merely state the type of plan, but should also specify the issues applicable to that type of plan that would justify review of that particular plan type under the determination letter program. Such issues may include specific plan features and special plan designs applicable to that type of plan, or unresolved questions of qualification in form with respect to that type of plan.”

Comments are due to the IRS by June 4, 2018. The Notice does not give a timetable for when the IRS might announce guidance if it decides to expand the determination letter program.