

Plan Qualification Opinion Letter Service

Effective January 31, 2017, the Internal Revenue Service (“IRS”) cancelled its determination letter program for ongoing individually designed retirement plans. As a result, an employer generally can no longer apply to the IRS to issue an opinion as to the tax qualification of the employer’s retirement plans. Seyfarth’s employee benefits practitioners offer our plan qualification opinion letter service to step in where the IRS has left off.

For almost all employers, qualified retirement plans are the most important vehicle for providing secure retirement income to their employees, and most employers have millions—if not billions—of dollars wrapped up in their qualified plans. Aside from the human resources benefit of offering retirement benefits, the key features of a qualified plan are primarily tax-driven, providing significant advantages to both employers and employees. The qualified retirement plan is nearly unique in allowing employers to currently deduct compensation that will not be taxed to employees for years in the future. However, the hurdles imposed by the IRS for these tax advantages are high. It is essential that plan sponsors maintain their plan documents in compliant form, and that the plan meets stringent operational and testing requirements as well.

Historically, plan sponsors have relied on the IRS determination letter program to confirm that the documentation for their individually-designed plans complies with IRS requirements. However, with limited exceptions for new plans and plan terminations, the IRS will not issue determination letters to individually-designed plans effective February 1, 2017. This leaves plan sponsors exposed to risk that their plan documents will not comply with evolving IRS regulations, law changes and new interpretive guidance. Moreover, plan amendments adopted after the effective date of the last IRS determination letter are not protected by that letter.

Our Plan Qualification Opinion Letter Service

- ✓ Review plan documents and amendments since the plan’s last IRS favorable determination letter
- ✓ Confirm that required amendments have been timely adopted
- ✓ Evaluate whether discretionary amendments issued since the last IRS letter meet tax-qualification requirements
- ✓ Evaluate whether the plan remains qualified in form under the Internal Revenue Code
- ✓ If possible, issue a legal opinion letter on the tax-qualified status of the plan

Having an up-to-date opinion on your qualified plan documentation can be particularly important in these situations, among others:

- Where corporate financing documents require management to make representations or warranties to the lender regarding plan qualification;
- Disposition of a corporate entity, where the seller (and perhaps also key shareholders) will be required to provide a representation or warranty regarding plan qualification;
- Acquisition of a corporate entity with its own “inherited” plan; and
- Where audit representation letters require management to confirm the plan’s qualified status, particularly after a material plan amendment that does not have the protection of an IRS determination letter. For a public company, there may be additional securities law implications to such a confirmation because of its impact on the company’s financial statements.

Next Steps

If you have any questions concerning our services or need more information, please contact any Seyfarth Shaw Employee Benefits and Executive Compensation attorney, Diane Dygert at ddygert@seyfarth.com, Fred Singerman at fsingerman@seyfarth.com, or Richard Loebl at rloebl@seyfarth.com.

Address: 233 S. Wacker Drive, Suite 8000 Chicago, IL 60606-6448 | Phone: (312) 460-5000



“Seyfarth Shaw” refers to Seyfarth Shaw LLP. Our London office operates as Seyfarth Shaw (UK) LLP, an affiliate of Seyfarth Shaw LLP. Seyfarth Shaw (UK) LLP is a limited liability partnership established under the laws of the State of Delaware, USA and is authorised and regulated by the Solicitors Regulation Authority with registered number 556927. Legal services provided by our Australian practice are provided by the Australian legal practitioner partners and employees of Seyfarth Shaw Australia, an Australian partnership. Our Hong Kong office “Seyfarth Shaw,” a registered foreign law firm, is a Hong Kong sole proprietorship and is legally distinct and independent from Seyfarth Shaw LLP, an Illinois limited liability partnership, and its other offices.