Internal Revenue Service Updates Qualified Retirement Plan Compliance Procedures

The Internal Revenue Service ("IRS") has issued important new guidance to update its Employee Plans Compliance Resolution System ("EPCRS"). The guidance, Revenue Procedure 2021-30, was published on July 16, 2021 ("Rev. Proc. 2021-30").

The update provides new favorable procedures for making corrections to qualified pension and profit sharing plans to maintain their tax favored status.

The EPCRS guidance and procedures permits employers that are qualified plan sponsors to correct errors or failures to meet plan qualification requirements under section 401(a) and related provisions of the Internal Revenue Code ("Code"). The EPCRS correction procedures permit plans to be brought into necessary compliance and thereby continue to provide employees with retirement benefits on a tax-favored basis.

EPCRS includes varying forms and levels of correction procedures for qualified plans. This generally includes (1) self-correction (SCP) by a plan sponsor without payment of any fee or sanction, (2) voluntary correction (VCP) with IRS approval at any time before an IRS audit, with the plan sponsor paying a limited fee and receiving IRS's approval for correction of a qualified plan, and (3) correction on audit by the IRS (Audit CAP) allowing a plan sponsor to correct a plan qualification failure and pay a sanction, based on the nature, extent and severity of the failure.

The IRS update provided in Rev. Proc. 2021-30 is a limited update and is published by the IRS primarily to address certain situations and correction procedures, and to:

1) expand IRS guidance on Overpayments;

2) eliminate an anonymous submission procedure under VCP, effective January 1, 2022;

3) add an anonymous, no-fee, VCP pre-submission conference procedure, effective January 1, 2022;

4) extend the end of the SCP correction period for significant failures by one year (which has the result of also extending the safe harbor correction method for Employee Elective Deferral Failures lasting more than three months but not beyond the extended SCP correction period for significant failures);

5) expand the ability of a Plan Sponsor to correct an Operational Failure under a SCP by plan amendment; and

6) extend by three years the sunset of the safe harbor correction method available for certain Employee Elective Deferral Failures associated with missed elective deferrals for eligible employees who are subject to an automatic contribution feature in a § 401(k) plan or § 403(b) Plan (from December 31, 2020, to December 31, 2023).

The updated EPCRS procedures provided in Rev. Proc. 2021-30 appear to continue, refine and expand the ways employers sponsoring retirement plans can maintain tax qualification of a plan with reduced administrative difficulty and expense.

If you would like to discuss the EPCRS update provided by Rev. Proc. 2021-30, or any other qualified retirement plan matters, please contact your GableGotwals attorney, or a member of our Tax Law Practice Group which includes:

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