

Changes to Tax Notices Required to Be Provided to Persons Entitled to Receive a Retirement Plan Distribution Issued

11.24.14

This afternoon, the IRS issued Notice 2014-74 which provided the edits to the tax notices that all qualified retirement plans are required to provide to participants who are entitled to receive a distribution of their benefit, for example, at termination of employment. These edits must be incorporated into the tax notices that retirement plans provide on and after January 1, 2015 to implement the rollover modifications related to the treatment of Roth accounts that were discussed in the email alert dated October 22, 2014 with the subject line of “401(k), Roth and Canadian Retirement Plan Reporting Changes under FBAR and What to Watch For.”

While overall the changes are not major, they are important and the plan’s (or plan’s record keeper’s) procedures need to be ready to accommodate the changes and be ready to give accurate information to participant questions about the new rollover rules. The changes not only reflect the change in the rollover rules but also discuss the In-Plan Roth Rollover tax treatment. The changes include a clarification that refunds of automatic enrollment contributions are not eligible to be rolled over, if your plan has implemented automatic enrollment in salary reduction or deferral contributions of persons when they are first eligible. There is one notice for a plan without a Roth account and a separate notice for a plan with a Roth Account. Copies of the new notices the IRS Issued are LINKED BELOW (scroll down), one for plans without Roth accounts, and the other is for Roth accounts.

Other Areas to Watch

There has been an increase in both the class actions seeking to have an individual’s independent contractor status be reclassified as employees and seeking overtime and minimum wage. The U.S. Department of Labor has also been making a more coordinated effort in this area with not only sharing information on investigations with the IRS, but also with a growing number of state departments of labor. The class action activity along with the increased oversight by more governmental bodies who are sharing their findings is a reminder that these arrangements should be carefully reviewed periodically to see if there is a way to minimize risk to the organization.

Any reclassification of an individual as an employee impacts not only the employer’s payroll obligations but also the employer’s obligations for retirement plan funding, presents retirement plan compliance issues, and also impacts health and welfare plan eligibility and liabilities (some of which may not be covered by stop loss coverage for self-insured employers) and next year the employer’s ability to meet safe harbors to avoid the employer shared responsibility tax on failing to offer coverage sufficiently broadly. Employers should periodically carefully review their agreements with independent contractors, staff leasing organizations and organizations to which departments are outsourced to determine if any of these arrangements should be modified in light of the new legal requirements and the increased oversight of these relationships.

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