

AN ALERT FROM THE BDO COMPENSATION & BENEFITS TAX PRACTICE

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► SUBJECT

INTERNAL REVENUE SERVICE ANNOUNCES PLAN TO EXAMINE 401(K) PLANS THAT FAILED TO SUBMIT QUESTIONNAIRE

► SUMMARY

In May 2010, the Service sent out letters and instructions to a random sample of 1,200 employers that sponsor 401(k) plans, asking them to complete a "401(k) Compliance Check Questionnaire." The Service said that the information gathered would provide a comprehensive view of 401(k) plans, and would help the Service maximize its resources for education, outreach, guidance, and enforcement efforts while minimizing the burden to compliant plan sponsors. Recipients of the questionnaires were given 90 days in which to respond, although the Service was liberal in granting extensions of time for the responses. The final extension of time expired in November 2010. At the time the questionnaires were sent to plan sponsors, the Service indicated that any future examinations or compliance checks, would not be a direct result of answers on the questionnaire. However, a failure to respond to the questionnaire or to provide complete information would result in "further enforcement action."

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According to remarks of Monika Templeman, Director, Employee Plans Examinations, published in the Winter 2011 edition of the Service's online newsletter, "Retirement News for Employers," plan sponsors that failed to return the 401(k) questionnaire will have their 401(k) plans subjected to a full-scope examination.

Any plan sponsor that received, but failed to respond to, the 401(k) Compliance Check Questionnaire should take a closer look at the plan's compliance in preparation for an IRS examination. The Service's 401(k) Plan Checklist could be used as a guide for a self review. Alternatively, an outside consultant could assist the sponsor in evaluating the plan's statutory and operational compliance. Advance review before the notice of examination will allow the plan sponsor to enter the Service's voluntary correction program, which provides correction procedures that are much more favorable to sponsors than IRS audit adjustments are likely to be.

Whether a plan sponsor received and completed the questionnaire, was selected for examination, invoked the voluntary correction procedures, or remained unaffected by the process, useful information is likely to be contained in the Service's interim report of general findings from the questionnaire, expected within the next six months, and in the final report, expected to be posted on the Service's Web site next year.

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