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Employee Benefits Update: IRS Private Letter Ruling Approves 401(k) Student Loan Benefit Programs

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On August 17, 2018 the IRS released a private letter ruling (PLR 201833012) addressing an employer's proposal to amend its plan to include a student loan benefit program. Under the program, the employer would make a non-elective contribution to its 401(k) plan if the employee made student loan repayments. The IRS determined that the program, as proposed, was permissible, potentially paving the way for other employers to follow suit.

The Program's Features

Under the student loan benefit program outlined in the PLR, an employee who is making student loan repayments equal to 2% of their annual salary can voluntarily enroll in the program. If an employee participates in the program, the employee would not be eligible to receive regular matching 401(k) contributions from the employer as long as he or she participates in the student loan benefit program. Instead, the employer would make a non-elective contribution to the plan equal to 5% of the employee's eligible compensation for the pay period the employee is enrolled in the program. However, an employee participating in the program would still be eligible to make elective contributions to the 401(k) plan.

If an employee initially enrolls in the program but later opts out, then the employee will be eligible for regular matching 401(k) contributions. Furthermore, if an employee fails to make a student loan repayment for a pay period equal to at least 2% of his or her eligible compensation, but does make an elective contribution during that pay period equal to at least 2% of eligible compensation, the employee will be eligible to receive a true-up matching contribution.

Key Observations

- A program like the one described in the ruling could help employees who may not be able to contribute to a retirement plan due to their obligation to make student loan payments.
- This PLR established that, under specific circumstances, employers may be able to connect the amount of employer contributions made on an employee's behalf under a 401(k) plan to the amount of student loan repayments made by the employee outside the plan.
- The non-elective contributions under the program were conditioned on whether an employee makes a student loan repayment during a pay period and was not conditioned on the employee making elective contributions under a cash or deferred arrangement.

- The non-elective contribution proposed in this PLR might not be available in every plan document. Plans that do not have this feature may be eligible to add the feature. Even with a plan document that would allow a similar student loan benefit program, all applicable plan qualification requirements must be met.

- It is important to note that PLRs are only citable authority for the taxpayer who requested the ruling, and may not be cited as precedent, although the ruling does suggest how the IRS may approach this matter in the future.

If you have any questions, please contact any member of Vedder Price's Executive Compensation & Employee Benefits group or any other Vedder Price attorney with whom you have worked.

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