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Timing is Everything

For years now, we have been hearing from the Department of Labor (DOL) about the importance of depositing employee 401(k) deferrals and loan payments as quickly as possible. While that continues to be the case, it seems that there is not nearly as much commentary about when to deposit company matching or profit sharing contributions. That is about to change with this article.

Depositing Employee Deferrals

An article about when to deposit contributions wouldn't be complete without at least a quick review of the timing requirements for employee 401(k) deferrals, requirements that apply to both pre-tax and Roth deferrals as well as payments participants make on their loans.

The rules sound really straightforward…deferrals must be deposited by the earlier of two time frames:

- As soon as they can reasonably be separated from the company's general assets, or
- The 15th business day of the month following the month in which they were withheld, e.g., by the 15th business day of March for a February pay date.

Because the second of these two timetables includes a quantifiable deadline (15 business days) rather than the more ambiguous "as soon as possible," the natural tendency is to focus on it; however, the DOL focuses on the more subjective standard.

The DOL typically looks at a company's actual deposit history and uses the fastest deposit to determine what "as soon as possible" means for that particular company. In other words, if a deposit was ever made within one or two days following a pay date, the DOL will usually take the position that all deposits should have been made that quickly.

Regardless of that history, however, it is unusual for the DOL to accept anything longer than three to five days after each payroll as being timely.

For plans with fewer than 100 participants on the first day of the plan year, the DOL has issued regulations that indicate they will consider deposits to be timely if made within seven business days following each pay date even if the deposit could technically be made more quickly. Larger plans continue to be subject to the "as soon as possible" standard.

Depositing Company Contributions

When it comes to company matching or profit sharing contributions, the question of when the deposits are due is best answered with another question, "Why are you asking?" This is due to the fact that the deadlines can vary depending on the purpose, e.g., deducting the contribution on the company tax return vs. correcting a failed nondiscrimination test. So, let's work our way through some of those deadlines.

Tax Deductions

One of the incentives for a business owner to establish and make contributions to a retirement plan is that those contributions (up to a certain limit) are deductible on the company's tax return.

In order for a company to deduct contributions for a given year, they must be deposited no later than the due date of the company tax return for that year. If the company files an extension, then contributions are due by the extended tax filing deadline. Consider this example:

> ABC Company, Inc. is an S Corporation, so the initial deadline for ABC to file its company tax return for 2014 is March 16, 2015 (usually March 15th, but it falls on a Sunday this year). In order for ABC to deduct its 2014 match and/or profit sharing contribution on the 2014 tax return, those contributions must be deposited no later than March 16th. If ABC extends its tax filing deadline until September 15, 2015, then the deposit can be made any time up until that date.

All is not lost, however, if the deposit is made after the tax filing deadline. The deduction can simply be taken in the following year. Continuing the above example, let's assume that ABC chooses not to extend its tax filing deadline but doesn't deposit its profit sharing contribution until April 1, 2015. It is too late to claim the deduction for 2014, but ABC can deduct the contribution on its 2015 tax return (which will be filed sometime in 2016).

If taking advantage of this option, it is a good idea to check with an experienced third party administrator or tax advisor to ensure that delaying the deduction and possibly "doubling up" in the subsequent year will not cause the company to exceed the maximum deduction limit.

Another thing to keep in mind is that different types of entities, e.g., corporations, partnerships, etc., have different tax filing deadlines. If you are not sure what the deadline is for your company, it is worth a quick call to your tax advisor to confirm.

Not for Profit Organizations

If you are reading this article and you are with a not for profit organization, you may be wondering, "We don't pay taxes and, therefore, don't deal with deductions. What is our deadline?"

This is actually one of the most straightforward of all the deadlines. Tax exempt organizations must deposit company contributions no later than the 15th day of the 10th month following the close of the plan year. That means for a calendar year plan, any contributions made for 2014 must be deposited no later than October 15, 2015.

Contribution Limits

The IRS limits the total contributions that can be allocated to a single participant for a given year. The "annual additions" limit is equal to the lesser of $53,000 or 100% of the participant's compensation for 2015. The dollar limit is indexed for inflation in $1,000 increments. What does this have to do with deposit deadlines? Well, in order for a contribution to be treated as an annual addition for a given year, it must be deposited no later than 30 days following the due date for the company tax return.

Let's go back to our friends at ABC Company. They do not extend their tax return, so it is due by March 16, 2015. They deposit their profit sharing contribution on April 1, 2015. Although it is not deductible for 2014, it is still treated as a 2014 annual addition for purposes of applying the IRS limit.

Test Corrections

Each year, 401(k) plans must satisfy the Actual Deferral Percentage (ADP) and Actual Contribution Percentage (ACP) tests to ensure the highly compensated employees (HCEs) do not receive benefits that are disproportionate to those provided to the non-HCEs (NHCEs). While a detailed description of these tests would make this article far too long, suffice it to say that if a plan fails one or both of these tests, there are a couple of options to correct—make refunds to the HCEs or contributions to NHCEs.

You guessed it. If a company elects to correct via additional contributions to NHCEs, there is yet another deadline for making the deposit. So-called "Qualified Noneletive Contributions" or QNECs (because everything has to be an acronym) must be deposited no later than the last day of the year following the year that fails the test. That means if ABC Company fails the ADP and/or ACP test for 2014 and wishes to correct via a QNEC, that contribution must be deposited no later than December 31, 2015.

Safe Harbor 401(k) Plans

Some 401(k) plans are designed with a safe harbor feature that provides for automatic passage of the ADP test if, among other requirements, the company agrees to make a minimum contribution that can be either a match or a QNEC. Generally speaking, these safe harbor contributions must be deposited no later than the last day of the following plan year. Yep, just like the last deadline we discussed.

But (and isn't there always a "but"?), there is a variation for plans that use the match version of the safe harbor contribution and calculate that match on a period that is less than annual, e.g., each pay period or at the end of each month. In those cases, the match must be deposited no later than the last day of the following quarter. That means any matching contributions for the first calendar quarter of 2015 must be deposited no later than June 30, 2015 (the end of the next quarter).

The Ubiquitous "Miscellaneous" Category

You would think after going through all of these deadlines, there wouldn't be anything left to fall under "Miscellaneous," but what would be the fun in that? Fortunately, these other deadlines only come into play in very limited circumstances.

The first relates to money purchase pension plans and target benefit plans. Although there aren't many of these types of plans around anymore, there are a few and they have

special deadlines. Contributions to these types of plans must be deposited no later than 8½ months following the close of the plan year, or September 15th for a calendar year plan.

The second miscellaneous item is probably a little more common but hopefully still fairly infrequent. It relates to correcting other types of plan operational problems. There are a lot of moving parts in retirement plans, and sometimes accidents happen. When they do, the IRS wants to see that participants are made whole, and there is a special procedure for doing so.

Often times, the way to do that is to make additional contributions to make up for the oversight. Although the normal tax deduction rules we described earlier continue to apply, contributions made as part of this correction procedure are treated as annual additions for the year in which the error occurred and not in the year of the actual deposit.

Conclusion

As you can see, trying to keep track of all these overlapping deadlines can be as challenging as following Abbot and Costello's "Who's On First?" routine (if you aren't familiar with it, it's worth the time to look it up online). Fortunately, if you are depositing contributions on a regular and ongoing basis, you are probably meeting these deadlines without thinking about it.

If it makes more sense for your business to only make deposits at certain times of the year, be sure to check with your third party administrator and/or tax advisor to make sure all parties properly coordinate the deadlines. After all, timing is everything.

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www.pinnacle-plan.com

1985 East River Road, Suite 111 ▲ Tucson, AZ 85718 ▲ P. 520.618.1305 ▲ F. 520.618.1306

2201 East Camelback Road, Suite 200 ▲ Phoenix, AZ 85016 ▲ P. 602.792.5982 ▲ F. 520.618.1306

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