



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

201434028

MAR 06 2014

SE: T: EP: RA: T2

**Uniform Issue List: 401.06-00 Required Distributions
401.06-01 In General**

XXXXX
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XXXXX
XXXXX
XXXXX

Legend:

Company = XXXXX

Plan = XXXXX

Dear XXXXX:

This letter is in response to your letter dated September 26, 2012, as supplemented by correspondence dated November 1, 2012, in which you request a Private Letter Ruling that the minimum distribution requirement of section 401(a)(9) of the Internal Revenue Code ("Code") would not be violated if the Company amended Plan to offer a lump sum payment option, during a limited window period, to certain participants and beneficiaries under the Plan for whom annuity payments have already begun. Additionally you request that the above referenced amendment will not trigger excise tax under section 4974 of the Code.

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

FACTS

Company, the taxpayer, is a global technology company. It is the sponsor of Plan, which is intended to be a tax-qualified, defined benefit plan, having received a favorable determination letter most recently on November 9, 2011. The Plan provides, for employees hired before June 1, 2002, a traditional

retirement benefit based on years of service and compensation. Benefits accrued by employees hired after June 1, 2002, are based on a cash balance benefit formula.¹

A participant in the Plan who is married or has a domestic partner beneficiary may elect to receive his or her traditional retirement benefit in the form of a 50%, 75%, or 100% joint and survivor annuity, or as a single life annuity with the consent of the participant's spouse, if any. A participant in the Plan who is not married and does not have a domestic partner beneficiary may elect to receive his or her traditional retirement benefit as a single life annuity. A participant in the Plan may elect to receive his or her cash balance benefit in the form of a lump sum payout, a single life annuity, or a 50%, 75%, or 100% joint and survivor annuity with a beneficiary of the participant's choosing. A married participant must have spousal consent to receive his or her cash balance benefit as a lump sum payout or a single life annuity.

Company represents that its management and investors are focusing their attention on the size, volatility and funded status of the Plan's liability. The Company further represents that the size of the Plan's pension obligations are out of line with those sponsored by other similar companies. The volatility of the Plan's funded status, arising from fluctuations in asset returns and interest rates, requires a significant commitment of Company's senior management's time and resources. Company is concerned that this volatility could also produce requirements for future contributions that absorb cash flow needed for Company's business investments. Accordingly, Company has commenced a multi-phase initiative to reduce the size and volatility of the Plan's liability and to stabilize the Plan's funded status.

As part of this initiative, Company proposes to amend the Plan to offer, during a limited period of time, a one-time lump sum payment option to certain participants and beneficiaries who are currently receiving benefits ("Eligible Annuitants").² Those married Eligible Annuitants will also be given an opportunity to elect to receive their remaining annuity payments either as a 50% qualified joint and survivor annuity, a 75% qualified optional survivor annuity, or a single life annuity, with spousal consent.³

Under the amendment, the Eligible Annuitants would have a specified limited window period of no less than 60 days and no more than 90 days during which they could elect to receive what the Company represents is the actuarial present value of their remaining benefits under the Plan at the time of such election in the

¹ The Plan is now closed to new participants and all benefit accruals have been frozen.

² Eligible Annuitants for this purpose will include all participants and beneficiaries in pay status, other than those who Company represents fall into an objectively-defined, nondiscriminatory category of participants and beneficiaries with respect to whom annuity settlements are deemed to be impractical or not in the interests of sound benefit administration.

³ Spousal consent must include, where applicable, both the current spouse and a former spouse if the annuitant has remarried since the annuity starting date.

form of a single lump payment. Eligible Annuitants who are married would be able to elect to receive, in lieu of their current annuity, the actuarial present value of their remaining accrued benefits either in a qualified joint and survivor annuity, a qualified optional survivor annuity or an immediate lump sum payment. Eligible Annuitants who take no action within the Annuity Settlement Window will continue to receive their remaining annuity payments in their present distribution form. The Company represents that Eligible Annuitants that elect a new distribution option will be considered to have a new annuity starting date as of the first day of the month in which their new benefit is payable.

Company represents that the Plan currently is not subject to any restrictions on benefit accruals, amendments increasing benefit liabilities, or distributions under section 436 of the Code. In addition, the Company represents that the amendment will not change the ability of Eligible Annuitants to elect during the Annuity Settlement Window to receive qualified joint and survivor annuities in accordance with sections 401(a)(11) and 417 of the Code.

Based on the facts and representations stated above, Company requests a ruling that the minimum distribution requirements of section 401(a)(9) of the Code would not be violated if the Company amended the Plan to implement the Annuity Settlement Window with respect to Eligible Annuitants. Additionally, Company requests a ruling that the above referenced amendment will not trigger an excise tax under section 4974 of the Code.

APPLICABLE LAW

Section 401(a)(9) of the Code and the regulations thereunder ("Regulations") provide rules relating to required minimum distributions from qualified plans. Section 401(a)(9) of the Code was enacted to ensure that amounts contributed to qualified retirement plans were used for retirement by requiring that retirement payments begin no later than a certain date, with no less than a certain amount being distributed each year of retirement. The legislative history of the original version of section 401(a)(9) of the Code in 1962 stated that its purpose is in "preventing lifetime accumulations which might escape income taxation altogether." (See: 108 Cong. Rev 18755, 18756 (1962) (statement of Sen. Smathers).

In general, Section 401(a)(9)(A) of the Code states that a trust shall not constitute a qualified trust under this subsection unless the plan provides the entire interest of each employee—

- (i) will be distributed to such employee not later than the required beginning date, or
- (ii) will be distributed, beginning not later than the required beginning date, in accordance with regulations over the life of such employee

or over the lives of such employee and a designated beneficiary (or over a period not extending beyond the life expectancy of such employee or the life expectancy of such employee and a designated beneficiary).

Section 401(a)(11) of the Code generally provides that a defined benefit plan will not be considered a qualified plan unless vested benefits, with respect to a married participant who dies before the annuity starting date, are payable in the form of a qualified preretirement survivor annuity, and with respect to a married participant who dies after the annuity starting date, a qualified joint and survivor annuity.

Section 402(c) of the Code provides rules applicable to rollovers from exempt trusts. Generally, eligible rollover distributions, as defined in paragraph (4) of that section, are not includable in gross income if such distributions are transferred to individual retirement accounts or individual retirement annuities ("IRAs"). In relevant part, paragraph (4) provides that an eligible rollover distribution is the balance to the credit of an employee in a qualified trust other than amounts required to be distributed under section 401(a)(9).

Section 415(a)(1)(A) of the Code provides that a trust which is a part of a pension plan will not constitute a qualified trust if the pension plan provides for the payment of benefits which exceed the limitation of section 415(b). Section 415(b)(2)(B) of the Code generally provides that if the benefit under a defined benefit plan is payable in any form other than a straight life annuity, the determination as to whether the section 415(b) limit has been satisfied shall be made by adjusting the benefit so that it is equivalent to a straight life annuity.

Section 417(a) of the Code provides that a plan meets the requirements of section 401(a)(11) if, among other requirements, each participant may elect during the applicable election period to waive the qualified joint and survivor annuity form of benefit or the qualified preretirement survivor annuity form of benefit (or both). Section 417(a)(6) of the Code defines the applicable election period as meaning, in part, in the case of an election to waive the qualified joint and survivor annuity form of benefit, the 180-day period ending on the annuity starting date.

Section 4974 of the Code provides that if the amount distributed during the taxable year of the payee under any qualified retirement plan or any eligible deferred compensation plan is less than the minimum required distribution (pursuant to sections 401(a)(9), 403(b)(10), 408(b)(3), of 457(d)(2) of the Code) for such taxable year, there is hereby imposed a tax equal to 50 percent of the amount by which such minimum required distribution exceeds the actual amount distributed during the taxable year. This tax shall be paid by the payee.

Treas. Reg. § 1.401(a)(9)-6, Q&A-1(a), in pertinent part, states that in order to satisfy section 401(a)(9) of the Code, distributions of the employee's entire interest under a defined benefit pension plan must be paid in the form of periodic annuity payments for the employee's life (or the joint lives of the employee and beneficiary) or over a period certain that does not exceed the maximum length of the period certain determined in accordance with A-3 of this section. Once payments have commenced over a period, the period may only be changed in accordance with A-13 or A-14 of this section. Except as otherwise provided in this section (such as permitted increases described in A-14 of this section), all payments (whether paid over an employee's life, joint lives, or a period certain) also must be nonincreasing.

Treas. Reg. § 1.401(a)(9)-6, Q & A-1(d) generally provides that, in the case of a single sum distribution, the minimum required distribution may be determined by either (1) treating the single sum distribution as the employee's account balance for the year or (2) expressing the employee's benefit as an annuity that would satisfy that section with an annuity starting date as of the first day of the distribution calendar year for which the required minimum distribution is being determined, and treating one year of annuity payments as the required minimum distribution for that year, and not eligible for rollover.

Treas. Reg. § 1.401(a)(9)-6, Q&A-13(a) states that an annuity payment period may be changed in accordance with the provisions set forth in paragraph (b) of this A-13 or in association with an annuity payment increase described in A-14 of this section.

Treas. Reg. § 1.401(a)(9)-6, Q&A-14(a) states that except as otherwise provided in this section, all annuity payments (whether paid over an employee's life, joint lives, or a period certain) must be non-increasing or increase only in accordance with one or more of the following –

(1) With an annual percentage increase that does not exceed the percentage increase in an eligible cost-of-living index as defined in paragraph (b) of this A-14 for a 12-month period ending in the year during which the increase occurs or the prior year;

(2) With a percentage increase that occurs at specified times (e.g., at specified ages) and does not exceed the cumulative total of annual percentage increases in an eligible cost-of-living index as defined in paragraph (b) of this A-14 since the annuity starting date, or if later, the date of the most recent percentage increase. However, in cases providing such a cumulative increase, an actuarial increase may not be provided to reflect the fact that increases were not provided in the interim years;

(3) To the extent of the reduction in the amount of the employee's payments to provide for a survivor benefit, but only if there is no longer a

survivor benefit because the beneficiary whose life was being used to determine the period described in section 401(a)(9)(A)(ii) over which payments were being made dies or is no longer the employee's beneficiary pursuant to a qualified domestic relations order within the meaning of section 414(p);

- (4) To pay increased benefits that result from a plan amendment;
- (5) To allow a beneficiary to convert the survivor portion of a joint and survivor annuity into a single sum distribution upon the employee's death; or
- (6) To the extent increases are permitted in accordance with paragraph (c) or (d) of this A-14.

Treas. Reg. § 1.415(b)-(1)(b)(iii) provides that if a participant will have distributions commencing at more than one annuity starting date, the limitations of section 415 of the Code must be satisfied as of each of the annuity starting dates, taking into account the benefits that have been provided at all of the annuity starting dates.

ANALYSIS

Section 401(a) of the Code provides a tax deferral for retirement benefits accumulated in a qualified pension plan. Section 401(a)(9) of the Code and the Regulations ensure that these tax-deferred accumulations are, in fact, used during retirement and do not escape taxation.

Treas. Reg. § 1.401(a)(9)-6 sets forth the rules governing required distributions from defined benefit plans and annuity contracts. Treas. Reg. § 1.401(a)(9)-6, Q&A-13(a) states that an annuity payment period may be changed in association with an annuity payment increase described in A-14 of this section. Treas. Reg. § 1.401(a)(9)-6, Q&A-14(a)(4) provides that annuity payments from a qualified plan may increase if the payment of increased benefits results from a plan amendment.

Company's proposed amendment to Plan adds a window period of no more than 60 days and no more than 90 days, to receive, in lieu of their current annuity, either a qualified joint and survivor annuity, the qualified optional survivor annuity, or an immediate lump sum payment. Those Eligible Annuitants who make an election during the limited window period will be subject to applicable spousal consent⁴.

⁴ Spousal consent must include, where applicable, both the current spouse and a former spouse if the annuitant has remarried since the annuity starting date.

With respect to the first ruling request, the proposed amendment will result in a change in the annuity payment period. The annuity payment period will be changed in association with the payment of increased benefits as a result of the addition of the lump sum option. In addition, Eligible Annuitants who wish to change their current distribution option will be considered to have a new annuity starting date as of the first date of the month in which their new benefit is payable. Because the ability to select a lump sum option will only be available during a limited window, the increased benefit payments will result from the proposed plan amendment and, as such, are a permitted benefit increase under Treas. Reg. § 1.401(a)(9)-6, Q&A-14(a)(4).

With respect to the second ruling request, as stated above, under the limited window period, Eligible Annuitants will be given the opportunity to elect a single lump-sum payment in lieu of all future remaining payments. Company has represented such lump-sum payments will be distributed to electing participants in a manner that is compliant with requirements of sections 401(a)(9), 401(a)(31), and 402(c) of the Code. Accordingly, to the extent that any amounts transferred from Plan to the Eligible Annuitant's IRA (or other eligible retirement plan) as part of the implementation of the limited window period do not include amounts required to be distributed under section 401(a)(9) (and such amounts required to be distributed under section 401(a)(9) to the electing participant are distributed), implementation of the relevant amendment will not trigger excise tax under section 4974.

Finally, in order for a plan to remain qualified under section 401(a) of the Code, the calculation of the value of the benefit elected under the lump sum window option must comply with the requirements of section 417(e) and the regulations thereunder. Under section 6.03 of Revenue Procedure 2014-4, subject to certain exceptions, the IRS generally does not issue letter rulings on matters involving qualification issues under section 401 through 420 of the Code. Qualification matters are generally handled by the Employee Plans Determination letter program as provided in Revenue Procedure 2014-6. Accordingly, we have not considered, among other matters, whether the lump sum window benefits comply with the requirements of section 417(e) and the regulations thereunder with respect to the amount of the distribution and minimum present value requirement that is applied based on the present value of the normal retirement benefit. Instead, this letter ruling is based on your representation that the lump sum window option satisfies section 417(e) of the Code and section 1.417(e)-1 of the regulations.

RULING

Therefore, in this circumstance, with respect to the first ruling request, the minimum distribution requirements of section 401(a)(9) of the Code would not be violated if the Company amended Plan to implement the Annuity Settlement Window with respect to Eligible Annuitants. With respect to the second ruling

request, the implementation of the Annuity Settlement Window will not, in itself, trigger excise tax under section 4974.

Except as specifically ruled above, no opinion is expressed as to the federal tax consequences of the transaction described above under any other provision of the Code, including sections 401(a)(4), 411, 415, 417 and 436 or of Title I of ERISA. No opinion is expressed regarding the qualification of the Plan.

In addition, no opinion is expressed on whether the method for valuing benefits under the lump sum window option satisfies the requirements of section 417(e) and the regulations thereunder.

This letter is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

If you wish to inquire about this ruling, please contact XXXXX at (XXX) XXX-XXXX. Please address all correspondence to SE:T:EP:RA:T2.

Sincerely,



William B. Hulteng, Manager
Employee Plans Technical Group

Enclosures:
Deleted copy of ruling letter
Notice of Intention to Disclose

cc: XXXXX
XXXXX
XXXXX
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