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HEALTHCARE REFORM: BUSINESSES

On June 28, 2012, the U.S. Supreme Court upheld the constitutionality of the Patient Protection and Affordable Care Act (PPACA) and its companion law, the Health Care and Education Reconciliation Act of 2010. As part of its primary purpose to facilitate healthcare reform, the PPACA includes key tax provisions that affect businesses. Many businesses and employers have waited to fully implement these provisions until the Supreme Court determined the fate of the health care reform law. Now, however, businesses must prepare to comply with the rules under PPACA.

Some requirements are already in effect, while other provisions apply starting in 2013 or later. Highlights of the provisions affecting businesses are summarized below in order of the effective date.

Small employer health insurance credit (2010 – 2015)

The PPACA created the temporary small employer health insurance tax credit. For tax years 2010 through 2013, the maximum credit is 35 percent of health insurance premiums paid by small business employers (25 percent for small tax-exempt employers). The credit is scheduled to increase to 50 percent for small business employers (35 percent for small tax-exempt employers) after 2013 (but will terminate after 2015). However, in tax years that begin after 2013, an employer must participate in an insurance exchange in order to claim the credit, and other modifications and restrictions on the credit apply.

IRS guidance explains that a qualified employer must have:

- Fewer than 25 full-time equivalent employees (FTEs) for the tax year
- Average annual wages of its employees for the year of less than \$50,000 per FTE
- A "qualifying arrangement" that is maintained.

Enhanced simple cafeteria plan rules for small businesses (effective for tax years beginning after 12/31/10)

A cafeteria plan provides participants with an opportunity to receive certain benefits on a pre-tax basis. The PPACA establishes a simple cafeteria plan and provides a safe harbor from nondiscrimination requirements to qualified small businesses. Generally, the employer must have employed an average of 100 or fewer employees on business days during either of the two preceding years. As a result, the provisions allow small employers to retain potentially discriminatory benefits for highly compensated and key employees while allowing other employees to enjoy the benefits of a cafeteria plan.

The PPACA limits the allowable deduction to \$500,000 for applicable individual remuneration and deferred deduction remuneration attributable to services performed by applicable individuals for covered health insurance providers.

Shared responsibility payment for employers regarding health coverage (applies to months beginning after December 31, 2013)

The PPACA's employer shared responsibility provisions (also known as the "employer mandate") specify that an applicable large employer may be subject to a shared responsibility payment (also known as an "assessable payment") if any full-time employee is certified to receive an applicable premium tax credit or cost-sharing reduction payment. Generally, this may occur where either:

- The employer does not offer to its fulltime employees (and their dependents) the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan; or
- The employer offers its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan that either is unaffordable relative to an employee's household income or does not provide minimum value (that pays at least 60 percent of benefits).

For purposes of the employer shared responsibility payment, an applicable large employer is an employer that on average employed 50 or more full-time equivalent employees on business days during the preceding calendar year. A full-time employee is an employee who is employed on average at least 30 hours per week.

Excise tax on high-cost health care coverage (effective starting in 2018)

Employer-sponsored health coverage that exceeds a threshold amount is scheduled to be subject to a 40-percent excise tax. The dollar limits for determining the tax thresholds are \$10,200 (for 2018) multiplied by the health cost adjustment percentage for an employee with self-only coverage; and \$27,500 (for 2018) multiplied by the health cost percentage for an employee with coverage other than self-only coverage.

Disclosure of cost of employer-sponsored coverage on Form W-2 (mandatory after 2011)

The PPACA generally requires employers to disclose the aggregate cost of applicable employer-sponsored coverage on an employee's Form W-2. Reporting is for informational purposes only. The IRS made reporting optional for all employers for 2011. The IRS also provided transition relief for small employers. For 2012 Forms W-2 (and W-2s issued in later years, unless and until further guidance is issued), an employer is not subject to reporting for any calendar year if the employer is required to file fewer than 250 Forms W-2 for the preceding calendar year.