Employer coverage requirements and tax penalties under the ACA

Executive summary

In June 2012, the US Supreme Court upheld the major coverage provisions of the Affordable Care Act (the ACA) as constitutional, prompting companies to pay closer attention and spurring action within their organizations to prepare for the employer requirements under the law. Some uncertainties remain regarding the law and possible changes to it that may result from the 2012 elections, but looming deadlines are driving companies to step up their compliance efforts to mitigate the potential for unforeseen tax liabilities.

Although the ACA does not require an employer to offer coverage to its employees, a large employer may be subject to a non-deductible excise tax under IRC §4980H if at least one full-time employee receives a premium tax credit for Exchange coverage, and the employer:

► Fails to offer coverage to full-time employees and their dependents (tax equals $2,000 times the total number of full-time employees)

Or

► Offers coverage to full-time employees that does not meet the law’s affordability or minimum value standards (tax equals $3,000 times the number of full-time employees receiving tax credits for Exchange coverage)

Employers also will face a host of new reporting requirements to the IRS under the ACA in order to demonstrate the value of coverage offered to employees, communicate to employees’ their coverage options, and certify compliance with the employer coverage provisions. A key concern for employers is how and when the IRS will notify an employer of its total excise tax liability for a given year.

Key definitions

**Large employer**: Defined as employers having at least 50 full-time equivalent employees, measured on a controlled group basis. The law includes special considerations for seasonal employees.

**Full-time employee**: Defined as an employee who is employed on average 30 hours of service per week, per month. The Treasury Department has provided a “measurement/stability period” safe harbor to allow for a measuring period for employees of unknown status to determine if they should be considered full time, and if so, an associated stability period in which coverage must be offered.

**Affordable**: To be considered affordable, an employee’s share of the self-only premium for the employer’s lowest-cost plan that provides minimum value cannot exceed 9.5% of household income, or the employee may be eligible for a premium tax credit to purchase health insurance exchange coverage. The Treasury Department has provided a safe harbor based on the employee’s current W-2 wages.

**Minimum value**: A plan fails to provide minimum value if, “the plan’s share of the total allowed costs of benefits provided under the plan is less than 60% of such costs.” This is generally understood to be a 60% actuarial value test. In April 2012, the Departments of Treasury and Health and Human Services issued a request for comments on several approaches to determining whether an employer plan provides minimum value.
In the months ahead, it is critical for companies to watch for upcoming regulations defining key requirements for employers and move ahead with compliance activities in order to reduce risk for increased tax liabilities. Many companies are undertaking compliance reviews and exploring other options to have their health plan offerings and associated administrative processes audited and certified to mitigate the potential risk for unforeseen tax penalties.

Contacts

For more information on the Affordable Care Act, including how your company can prepare to comply, contact:

Anne Phelps  
Washington Council Ernst & Young, Ernst & Young LLP  
anne.phelps@wc.ey.com  
+1 202 467 8416

Catherine Creech, Ernst & Young LLP  
Tax Services – Performance and Reward  
catherine.creech@ey.com  
+1 202 327 8047

Helen Morrison, Ernst & Young LLP  
Tax Services – Performance and Reward  
Helen.morrison@ey.com  
+1 202 327 7016

Wendy Roy, Ernst & Young LLP  
Tax Services – Employee Financial Services  
wendy.roy@ey.com  
+1 858 535 7690

Michael Dell, Ernst & Young LLP  
Tax Services – EY Center for Tax Policy  
michael.dell@ey.com  
+1 202 327 8788

Ernst & Young

Ernst & Young is a global leader in assurance, tax, transaction and advisory services. Worldwide, our 167,000 people are united by our shared values and an unwavering commitment to quality. We make a difference by helping our people, our clients and our wider communities achieve their potential.

Ernst & Young refers to the global organization of member firms of Ernst & Young Global Limited, each of which is a separate legal entity.

Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients.

Ernst & Young LLP is a client-serving member firm of Ernst & Young Global Limited operating in the US. For more information about our organization, please visit www.ey.com.

About Washington Council Ernst & Young

Washington Council Ernst & Young (WCEY) is a legislative and regulatory advisory services group that helps clients seize opportunities and manage the risks associated with the federal legislative and regulatory process. Our practice covers domestic and international taxation; health care; energy; employee benefits; financial services and other issues. For more information, please visit www.wcey.com.

© 2012 Ernst & Young LLP. All Rights Reserved.

SCORE No. YY2795

This publication contains information in summary form and is therefore intended for general guidance only. It is not intended to be a substitute for detailed research or the exercise of professional judgment. Neither Ernst & Young LLP nor any other member of the global Ernst & Young organization can accept any responsibility for loss occasioned to any person acting or refraining from action as a result of any material in this publication. On any specific matter, reference should be made to the appropriate advisor.

www.ey.com  
ED 0113