The future of the ACA: a time of uncertainty

The Affordable Care Act (ACA) has been defined by change since its inception in 2010 and, for many employers, these changes have required significant time and effort to implement. While further change is a near certainty, the timing of change and the provisions that will ultimately be approved remain unclear.

“Obamacare is the law of the land. ... We’re going to be living with Obamacare for the foreseeable future.”

— House Speaker Paul Ryan
March 24, 2017

How do employers plan prospectively while ACA remains the law of the land?

While we await new legislation, the ACA requirements for employer reporting and the employer mandate are still in place, and employers must continue to comply with them. The risks of noncompliance with the employer mandate are material and failure to meet them could result in significant liability for the Employer Shared Responsibility Payments (ESRPs), which are nondeductible excise taxes.

<table>
<thead>
<tr>
<th>ESRP Amounts</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
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<tbody>
<tr>
<td>4980H(a)</td>
<td>$2,080 X the total number of full-time employees (FTEs)</td>
<td>$2,160 X the total number of FTEs</td>
<td>$2,260 X the total number of FTEs</td>
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<tr>
<td>4980H(b)</td>
<td>Lesser of $3,120 X the number of FTEs receiving a premium assistance tax credit or $2,080 X the total number of FTEs</td>
<td>Lesser of $3,240 X the number of FTEs receiving a premium assistance tax credit or $2,160 X the total number of FTEs</td>
<td>Lesser of $3,390 X the number of FTEs receiving a premium assistance tax credit or $2,260 X the total number of FTEs</td>
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IRS FAQs indicate that 4980H employer shared responsibility penalty notices for the 2015 reporting year will be issued in 2017.

We expect the IRS to release guidance outlining the procedures for employers to properly respond to a 4980H employer shared responsibility notice.
Leading practices for managing ESRP notices

• Begin reviewing 2015 data now to determine likelihood of ESRP liability
• Define and implement a process for responding to letters of potential ESRP liability
• To prevent providing incomplete or unnecessary information in response letters, we recommend engaging or consulting with a tax advisor experienced in providing IRS controversy defense and experienced in dealing with the ESRP provisions of the ACA

ACA controversy services

Ernst & Young LLP has been following the ACA since it was signed into law in 2010 and continues to invest in helping employers manage the complexities associated with ACA compliance. In this increasingly uncertain environment, our team of highly skilled professionals are uniquely positioned to help you plan for change and manage any potential risk of ACA penalties. Our team includes:

• Benefits subject-matter professionals
• Certified public accountants
• Industry professionals
• Former IRS and Treasury professionals
• Attorneys previously involved with the initial drafting of the ACA regulations

Our practice has extensive experience working with both the IRS and the US Treasury and liaising with these agencies on behalf of our clients. As tax preparers with deep ACA technical knowledge, we are uniquely positioned to provide support to our clients in the event a penalty notice is received and to gather the appropriate information to properly respond. We have an extensive network of tax and tax controversy practitioners to help clients prevent, manage and resolve controversy efficiently and effectively.

Workforce advisory services

Ernst & Young LLP is a leading provider of workforce tax advisory services representing many of the largest US and global employers. Our streamlined service delivery model helps facilitate integration and support across the employment life cycle.

A team of nearly 400 professionals is supported by state-of-the-art technology for ACA, Work Opportunity Tax Credit (WOTC) and unemployment insurance claims management and processing. Our ACA COMPASS™ technology received the 2015 Gold Level Stevie® Award for Technical Innovation of the Year and we were first to market with WOTC e-signature, mobile screening and integrated services, including applicant tracking and hiring systems to facilitate an efficient and effective process.

In addition to leading edge client service, we provide timely and relevant value-added content, including special reports, tax alerts, EY Payroll Newsflash (timely alerts on federal and state payroll tax developments) and our monthly newsletter, Payroll Perspectives.

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