

Obamacare - 2013 Tax Impact Review

The Affordable Care Act, commonly known as Obamacare was enacted on March 23, 2010. Although both sides of the aisles have debated its constitutionality and long term viability, one thing is certain, it will tax consequences for each and everyone of us. Below I set out to guide you through the Affordable Care Act, devoid of any political discussion, focusing solely on its tax impact on you.

Obamacare – Health Care portion

(Legal References: Affordable Care Act, P.L. 11-148, Joint Committee on Taxation – JCX-18-10 dated March 21, 2010 and JCX-27-10). *These are just some highlights and general overviews. The items discussed are not the full law. Please discuss with your health insurance broker / company and your tax advisor. In addition, some of the ACA were changed during the passing of the American Taxpayer Relief Act of 2012 but may have not been updated as discussed below.*

Large Employers - Automatic enrollment (P.L. 111-148, Sec. 1511): With an effective date of March 23, 2010, Employers that have more than 200 employees and offer health benefits to their employees must automatically enroll new employees in one of the health benefit plans the employer offers and continue enrollment of current employees in a health benefit plan. Employees must be given adequate notice and an opportunity to opt-out of the coverage in which they are automatically enrolled.

Note, the IRS and DOL have delayed compliance with this provision until additional guidance is issued by the DOL and IRS.

Assistance for nursing mothers in the workplace: Beginning on March 23, 2010, Employers with 50 or more employees must provide a reasonable break time and a place, other than a bathroom, for nursing mothers to use for expressing milk. Employers with fewer than 50 works may qualify for an exception for meeting these requirements.

Dependent Coverage: Effective on March 30, 2010, plans that offer health insurance coverage for dependent children must continue to offer the coverage until the child reaches age 26.

Form W-2 Reporting: Employers must report the aggregate cost of employer-sponsored health coverage on Form W-2.

Reporting for 2011 was optional (IRS Notice 2010-69) and the IRS has provided relief for certain small employers beginning with 2012 Forms W-2.

Small Employers. The IRS has provided relief from the reporting requirements for some small employers. Employers that were required to file fewer than 250 Forms W-2 for the preceding calendar year are not required to report the aggregate cost of employer-sponsored health coverage on current year Form W-2 (IRS Notice 2012, Q&A 3).

The aggregate costs should be reported on form W-2 box 12, using code DD.

Amounts not subject to reporting requirements are accident only coverage, disability income insurance, long-term care insurance, supplemental liability insurance coverage, liability insurance, including general liability insurance and automobile insurance, workers compensation, and other

similar coverage under which benefits for medical care are secondary or incidental to the other insurance benefit.

Note that employer contributions to HSA's are not reported in box 12 using code DD (IRS notice 2012-9, Q&A 16). However, employer contributions to these accounts are required to be reported on form W-2 in box 12 with a code HSA.

Related Employers: Don't think you can create multiple companies to get out of the ACA rules. Businesses that have common ownership, generally 50% or more, common officers, or common employees (30%) are generally treated as one company for the ACA rules.

Over-the-counter medicines & drugs (IRC section 220(d)(2)(A) / 223(d)(2)(A) and 106(f): Starting on or after January 1, 2011, reimbursements for over-the-counter (OTC) medicines and drugs unless prescribed or insulin, are not allowed by health FSA or HRAs. Similarly distributions from HSAs and Archer MSAs for medicine and drugs are tax-free only if medicine or drug is prescribed or is insulin.

This is a BIG change for taxpayers. Looks like we may need to get prescriptions more often.

Penalties for non-medical purpose distributions: Distributions made on or after January 1, 2011 will be 20% for distributions from HSAs and Archers MSAs that are not used for medical purposes. Remember the over-the-counter requirements above.

Increased Medicare tax: Beginning on or after January 1, 2013: An additional 0.9% Medicare tax applies to an individual's wages received in excess of \$200,000 (\$250,000 for married filing jointly; \$125,000 for married filing separately). The additional Medicare tax also applied to self-employed income as discussed above.

Medical Deduction – Schedule A: Tax year beginning on or after January 1, 2013, the itemized deduction of medical expenses threshold is increased from 7.5% of AGI to 10% of AGI.

However if the taxpayer is age 65 or older, the increased threshold is effective for tax years beginning after 2016.

Excise tax on sales of certain medical devices: Sales on or after January 1, 2012 of medical devices will incur a 2.3% excise tax. The tax is imposed on the producer, manufacturer, or importer of a medical device intended for humans.

We understand this section of the ACA is being debated within Congress. It seems as if this excise tax is left intact that medical devices will get more expensive and the consumer will end up paying for it.

Requirement to offer health insurance: Pursuant to IRC section 4980H, For tax years beginning on or after January 1, 2014 applicable large employers (i.e. employers that average at least 50 full-time employees on business days in the prior calendar year) must offer minimum essential insurance coverage to all full time employees (and their dependents).

An employer shall not be considered to employ more than 50 full-time employees if:

The employer's workforce exceeds 50 full-time employees for 120 days or fewer during the calendar year, and

The employees in excess of 50 employed during such 120 day period were seasonal workers.

A full-time employees in general means with respect to any month, an employee who is employed on average at least 30 hours of service per week.

Penalties Imposed on Businesses: Pursuant to IRC section 4980H, effective on or after January 1, 2014, a large employer (50 full-time employees) may be subject to an assessable payment / penalty / excise tax if:

- 1) the employer fails to offer to its full time employees and their dependents the opportunity to enroll in a minimum essential coverage under an eligible employer sponsored plan for that month; and
- 2) at least one full time employee has been certified to the employer as having enrolled for that month in a qualified health plan for which an applicable premium tax credit or cost sharing reduction (collectively referred to as “health coverage assistance”) is allowed or paid with respect to the employee.

Penalty: The assessable penalty (i.e. excise tax) is \$166.67 per month with a maximum amount of \$2,000 per year. The penalty is per eligible employee.

This seems to be one of the areas in which the US Supreme court ruled that the ACA penalties were a “tax” and not a fee. We have been informed that the IRS will not be enforcing the payment of the “tax”. It will be interesting how this excise tax will be enforced. Also if this remains an excise tax, generally excise tax is not a deduction to arrive to federal taxable income.

Example: In 2014, Employer A fails to offer minimum essential coverage and has 100 full-time employees, 10 of whom receive a tax credit for the year for enrolling in a state Exchange-offered plan. For each employee over the 30-employee threshold, the employer owes \$2,000, for a total penalty of \$140,000 ($\$2,000 \times 70$ (100 – 30)). This penalty is assessed on a monthly basis.

Waiting Period: For plan years beginning on or after January 1, 2014, for group health plans no waiting periods in excess of 90 days are allowed.

Wellness Programs: Group medical insurance costs may be reduced if the group participants are healthier. Thus an employer can provide wellness programs that provide an employee with incentives. The incentives generally are a reduction in the premium cost of the employees’ health insurance. The typical rate reduction incentives are generally allowed up to 30%.

This is a complicated area of the already complicated ACA. One needs to check with their insurance agent / broker.

A typical example of a wellness program would be the business could pay for all or a portion of an employee’s membership.

Then the business needs to determine if those health club dues can be deductible as it typically wasn’t deductible unless it was counted as compensation. It would be nice if any health club dues related to a wellness program were treated as a fringe benefit, meaning the cost is deductible for the business and not taxable income to the employee.

High-cost / Cadillac plan tax: Beginning on or after January 1, 2018 a 40% nondeductible excise tax will be levied on the excess benefit amount of applicable employer-sponsored health plans with aggregate costs over \$10,200 for self-only coverage and \$27,500 for any other coverage. These amounts should be increased slightly for coverage that applies to retired individuals age 55 and older who are not eligible for enrollment in

Medicare or entitled to Medicare benefits and for plans that cover employees engaged in high-risk professions.

Notification requirements: Employer as of March 1, 2013 must notify employees (a) of the existence of an insurance exchange, (b) that the employee may be eligible for a subsidy under the exchange if the employer's share of the total cost of benefit is less than 60%; and (c) that if the employee purchases a policy through the insurance exchange, he or she may lose the employer contribution to any health benefits offered by the employer.

As many of us have heard, there already a few states which are stating they will not create a state insurance exchange. So, again, we are not sure what this effect will have on ACA. However, under this section if there is no state insurance exchange, then it seems like notification would not be required.

Shared responsibility penalty for employers offering minimum essential health insurance coverage that is unaffordable or does not provide minimum value: Pursuant to IRC section 4980H(b), beginning on or after January 1, 2014, Applicable large employers that do not offer full-time employees (and their dependents) affordable minimum essential health insurance coverage that provides minimum value may be subject to a \$250 penalty (for each certified employee) for each month (i.e., \$3,000 per year per certified employee) that a full-time employee is certified to the employer as having been allowed or paid a premium assistance credit or cost-sharing-reduction subsidy. However, the total penalty paid for all affected employees is limited to the amount that the employer would have paid if it had not offered minimum essential health insurance coverage.

Here is another penalty which again is confusing. It just seems like the Federal government just wants all employers to offer adequate health insurance, and they are continuously trying to put specific definitions and boundaries to minimize abuse. Once really needs to work with their insurance agent / broker.

Annual certification of coverage to the IRS and covered individuals. Pursuant to IRC section 6055 and 6056, beginning on or after January 1, 2014, every person providing minimum essential coverage to a covered individual and certain applicable large employers required to offer enrollment in minimum essential coverage under an employer-sponsored plan are required to provide information statements regarding certain health insurance coverage to the IRS and the covered individual or employee.

The changes discussed here are not comprehensive, but rather meant to give you a broad overview of the tax impact of the Affordable Care Act. Hopefully you now have a better idea of what areas of the law will impact you and you can plan accordingly. Be sure to consult your tax advisor and/or health insurance broker or company regarding any areas of uncertainty and for further knowledge regarding the laws specific impact on you.

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