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Q&A

Employers brace for health reform tax changes



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Q&A talks with Murtha Cullina partner Rachel Faye Smith about the tax impact of the Affordable Care Act on employers.

Q: As employers prep their tax returns ahead of the April 15 deadline, what are the most important tax implications from the Affordable Care Act?

A: The tax implication most employers identify relates to the employer mandate. This is the component of the Affordable Care Act that requires applicable large employers (ALEs) to offer health insurance to their full-time employees, or face certain penalties. After a delayed start the

employer mandate is in partial effect in 2015, and comes into full effect in 2016.

In addition, there are certain types of employers, like medical device manufacturers, health insurers, and charitable hospitals, that may have industry-specific tax considerations. On the tax credit side, small businesses may be eligible for tax credits for a percentage of the cost of premiums for health insurance they offer to their employees.

While the tax implications are a hot-button issue, as employers prepare for the full effect of the Affordable Care Act the biggest challenge to date has been the financial and administrative cost of preparedness. Employers are struggling to understand the rules and how they apply. This has resulted in new costs as employers engage third-party professionals to help navigate the new regulatory landscape, and as they hire new or repurpose old employees to address new obligations.

Q: Are there any changes to the ACA's small business tax credit that will impact employers?

A: The small business tax credit changed for tax years beginning in 2014 or later. Previously the maximum credit was 35 percent of premiums paid for small


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business employers, and 25 percent of premiums paid for small tax-exempt employers. For tax years beginning in 2014 or later, the maximum credit will increase to 50 percent for small business employers and 35 percent for small tax-exempt employers.

Generally speaking, to qualify for a small business tax credit after the 2014 changes, employers must have no more than 25 full-time equivalent employees with average annual wages of less than \$50,000, purchase insurance through the SHOP marketplace (or qualify for an exemption to this requirement), and cover at least 50 percent of the cost of employee-only healthcare coverage for each of their employees.

The credit is certainly an advantage to those who qualify, and it applies in addition to the business expense tax deduction already applicable to premium payments. However, the small business tax credit can only be claimed for two consecutive tax years, and many small employers are finding the cost of health insurance on the SHOP marketplace to be unaffordable. In addition, the credit applies on a sliding scale and is designed to benefit companies with low-to middle-income employees. Many small businesses will not find the credit to be as valuable as they may hope.

Q: Starting this year some employers face a penalty if they don't offer their worker's health insurance. Who is impacted by this, and how does the penalty work?

A: This is the employer mandate discussed above, and it applies to employers that qualify as an applicable large employer (ALE). Generally speaking, an ALE is an employer that employed an average of at least 50 full-time employees on business days during the preceding calendar year. The employer mandate went into effect on Jan. 1, 2015, though there is a transition period through Jan. 1, 2016 for ALEs with 50-99 full-time equivalent employees. The employer mandate requires ALEs to either offer health insurance to their full-time employees in accordance with these rules, or pay applicable penalties.

Two different penalties apply under the employer mandate. Generally speaking, if an ALE does not offer minimum essential health insurance to 95 percent of its full-time employees (70 percent in 2015), and an employee applies for and receives a premium reduction or cost-sharing subsidy for coverage purchased on the exchange marketplace, then the employer will be assessed a penalty of \$2,000 per year multiplied by the number of full-time employees for each calendar month of the year, minus the first 30 full-time employees (80 in 2015).

If an ALE does offer minimum essential coverage, but the coverage is not affordable or does not provide minimum value, then the employer will be assessed a \$3,000 penalty per employee who is not offered minimum value affordable coverage and receives a premium subsidy for coverage purchased on the insurance exchange marketplace.

Q: What new tax reporting requirements are there under the Affordable Care Act?

A: Under the new reporting rules, ALEs will need to provide information to the IRS about the health insurance they do (or do not) provide to their employees, including information about their employee population. ALEs with fully-insured health plans must file Forms 1094-C and 1095-C, which will include separate statements for each individual who is provided minimum essential coverage as well as a single transmittal form.

Self-insured plan sponsors and health insurance carriers must file Forms 1094-B and 1095-B. Coverage statements will also need to be provided to employees. The first returns required to be filed are for the 2015 calendar year and must be filed no later than Feb. 29, 2016, or March 31, 2016, if filed electronically.

The IRS is encouraging ALEs to file these forms for calendar year 2014, but this is not required.

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