



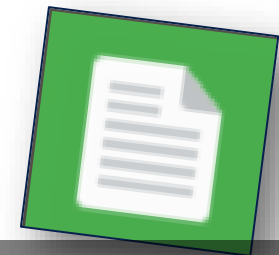
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Compensation Benefits, Tax Reform and What we Know Now

Healthcare Webinar

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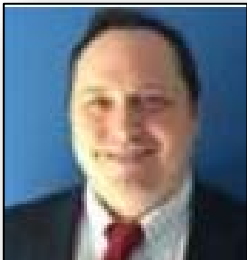
Today's Presenter



David Horvath, CPA
Managing Director



Tim Daum
Managing Director



Allen Tobin
Senior Manager



Polling Question #1

How would you rate the impacts of the changes in the areas of compensation, benefits and tax reform will have on your organization in 2019?

- A. Significant
- B. Moderate
- C. No real changes
- D. Not sure



ACA Penalties and M&A Topics

David S. Horvath, CPA

ACA Penalty Risks for Employers (“A” Penalty)

- IRC Sec. 4980H(a) – “Pay or Play Penalty”
 - Occurs when Applicable Large Employer (ALE) fails to offer Minimum Essential Coverage (MEC) to at least 70% of full-time employees, and their dependents **and** at least one full time employee was allowed a Premium Tax Credit (PTC) after getting coverage through a State Exchange.
 - Definitions are important
 - Very few ALE’s elected to “pay” rather than “play”
 - MEC must be ACA compliant – no limitations for pre-existing conditions, no annual or lifetime maximums, etc.

ACA Penalty Risks for Employers (“B” Penalty)

- IRC Sec. 4980H(b) – Penalty for Employee(s) getting subsidized coverage through Exchange
 - Could occur if employee was not offered employer coverage or if employer offered coverage that was unaffordable or did not provide minimum value
 - Requires employee to complete application for coverage through State Exchange
 - Application is fairly complex and employee must indicate whether they received an offer of coverage from their employer and whether it was Affordable under ACA standards
 - Affordability is based on self-only coverage for the lowest cost benefit plan where employee’s premium cost does not exceed 9.5% of AGI

Polling Question

For an employer to be penalized under either the “A” or “B” penalty, at least one employee needs to enroll in coverage through the State Exchange and receive a Premium Tax Credit (PTC).

- A. True
- B. False



IRS Penalty Assessments

- Starting with 2015 Plan Year
- Letter L226J contains a proposed Employer Shared Responsibility Payment (ESRP) that the employer owes.
- Proposed penalty can be six figures and larger
- Cause for the ESRP not specified in letter, but ESRP Summary Table contained in the letter along with Form 14765, Employee Premium Tax Credit (PTC) Listing provides insight
- If Employer disagrees with proposed assessment, responding by the listed response date in the letter is critical

Proposed Penalty Response

- Evaluate whether Forms 1094 and 1095 were filed correctly
- Instructions were not very clear and lots of incorrect forms were filed
- Response should be clear and concise regarding reasons for disagreement with proposed ESRP
- In addition to written response, Form 14764, ESRP Response should be completed with contact and representative information
- Form 14765 shows corrected codes for employees receiving PTC
- Initial response should reserve all administrative and appeals rights

Benefits Topics in M&A

- Employee benefit plans sponsored by the target company are frequently analyzed in due diligence performed by the buyer and their advisors
- Ideal time to correct operational failures is pre-transaction
- Programs are available for correcting qualified retirement plan operational defects (EPCRS)
- Late or Missing Forms 5500 can be filed under Delinquent Filer Voluntary Compliance (DFVC) Program
- Program also available for missed filings to exempt non-qualified deferred compensation plans from ERISA

Benefits Risks in M&A

- Buyers are frequently concerned about benefit liabilities involving actuarial projections or estimates
- Important to understand actuarial reports and funding levels for defined benefit plans
- Consider fiduciary risks related to investment oversight, late deposits of 401(k) deferrals and participant disclosures
- Review collective bargain agreements, if applicable, for benefit risks, withdrawal liabilities, etc.
- Evaluate liability for post-retirement medical obligation, if applicable
- Consider insurance covering representations and warranties



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Section 162(m)

Tim Daum, Managing Director

Section 162(m)

Changes to Section 162(m) – \$1 Million Compensation Deduction Limitation for Public Companies

- Performance and commission-based exceptions to \$1 million limit that were available under prior Sec. 162(m) rules have been repealed.
- New definition of covered employee under Sec. 162(m):
 - Principal Executive Officer (PEO)
 - Principal Financial Officer (PFO)
 - 3 highest paid officers other than PEO and PFO
- Before tax reform, covered employees were limited to officers employed at the end of the year. Year end employment is no longer required to be a covered employee.
- Anyone who is a covered employee during 2017 or any later year will forever be a covered employee and post-death payments made to beneficiaries of covered employees count toward the \$1 million limitation.

Grandfathering Rules

- IRS Notice 2018-68 provides guidance on grandfathering rules.
- Grandfathering may be helpful in situations that would have escaped the 162(m) limitation under the old rules (e.g., payments of performance-based compensation, payments to CFO, and payments to terminated employees).
- Grandfathering is available for compensation that is payable under a written binding contract that was in effect on November 2, 2017 to the extent the corporation is obligated under applicable law (for example, state contract law) to pay the compensation under such contract if the employee performs services or satisfies the applicable vesting conditions.

Grandfathering Rules

- If a written binding contract is materially modified, it is treated as a new contract entered into as of the date of the material modification. Any payments made after the material modification are ineligible for grandfathering. A material modification occurs if a contract is amended to increase the amount of compensation payable to the employee.
- A written binding contract that is terminable or cancelable by the corporation without the employee's consent after November 2, 2017, is treated as renewed as of the date that any such termination or cancellation, if made, would be effective. Payments made under a renewed contract generally lose grandfathering, although it appears that amounts earned under the contract prior to renewal may continue to qualify for grandfathering after the renewal.
- “Negative discretion” refers to the ability of an employer to unilaterally reduce the amount due to an employee under a performance-based compensation plan or similar arrangement. Grandfathering is unavailable with respect to any amounts that are subject to negative discretion if such negative discretion is enforceable under applicable law.

Grandfathering Rules

General Observations:

- Stock options, SARs and restricted stock granted prior to November 2, 2017, that qualify as performance-based compensation under the old 162(m) rules are grandfathered even if they vest after November 2, 2017, assuming they constitute a written binding contract as of that date.
- Stock options, SARs and restricted stock granted after November 2, 2017, will generally be ineligible for grandfathering, unless they were granted pursuant to a written binding contract in effect as of November 2, 2017.

Polling Question

Has your company assessed which plans may be eligible for grandfathering treatment under the old 162(m) rules?

- A. Yes, our assessment is complete.
- B. Yes, we are currently assessing.
- C. No, we have not yet begun an assessment.
- D. We are not a public company subject to 162(m).



Section 4960

Internal Revenue Code Section 4960

- New section applicable to tax-exempt entities effective for tax years beginning after December 31, 2017.
- 21% penalty tax on the organization for any payments to “covered employees” that are either in excess of \$1 million or that constitute “excess parachute payments.”
- Payments are treated as made when there is no substantial risk of forfeiture.
- Covered employees include any person who is one of the five highest paid employees for any taxable year beginning after December 31, 2016. Once an individual is a covered employee, he or she is forever a covered employee.
- Compensation paid to a licensed medical professional for the performance of medical services is excluded from these rules.
- Compensation paid by all related organizations is aggregated.

Internal Revenue Code Section 4960

- An excess parachute payment is the portion of any “parachute payment” that is in excess of the covered employee’s “base amount.”
- A parachute payment means any payment of compensation that is contingent upon separation from service if the present value of all such payments exceeds three times the covered employee’s base amount.
- A covered employee’s base amount generally is the average of the employee’s taxable compensation for the five calendar years immediately preceding the calendar year of the employee’s separation from service.
- Payments from qualified retirement plans, 403(b) plans and 457(b) plans are excluded from these rules.
- Compensation paid to a licensed medical professional for the performance of medical services is excluded from these rules.
- Payments made to non-highly compensated employees are excluded from these rules.



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Employee Benefit Compliance and Key Areas of Focus



Allen Tobin, Senior Manager

Employee Benefit Compliance

Polling Question

Have you been subject to an Employment Tax audit?

- A. Yes, we are currently under audit.
- B. Yes, we have been audited in the last five years.
- C. No, we have not been audited.
- D. No, but we anticipate an audit in the near future.



Meals and Entertainment Expenses

- The Tax Cuts and Job Act (TCJA) eliminated the deduction for entertainment expenses
- TCJA specifically eliminated:
 - Deductions for expenses incurred for entertainment facilities
 - Amounts paid for membership in any club organized for business, pleasure, recreation, or social purposes
 - Meals purchased during entertainment activities
- Employers can fully deduct entertainment expenses included in employee W-2 wages or paid under certain reimbursement arrangements

Meals and Entertainment Expenses

- 50 percent deduction still allowed for amounts paid for meals associated with the active conduct of the taxpayer's trade or business
- Two significant changes to law:
 - Definition of "business meal" removed
 - Still 50% deductible
 - Meals paid for the convenience of the employer
 - Definition expanded – includes onsite dining
 - Now 50% deductible
- Holiday party or similar social events for employees

Meals and Entertainment Expenses

Type of M&E Expense	Treatment Post TJCA (beginning 1/1/18)
Meals with clients, customers, or prospects at an entertainment activity (for example, meals at a sporting event)	Nondeductible
Meals with clients, customers, or prospects with substantial business discussions	50% Deductible
Meals with clients, customers, or prospects without substantial business discussions	Nondeductible
On-premise meals provided for the convenience of the employer (such as lunch or dinner provided to employees while working)	50% Deductible (until 1/1/26)
Meal reimbursements for employees while traveling on business	50% Deductible
Free meals to employees from an on-site dining facility	50% Deductible (until 1/1/26)

Employee Achievement/Service Awards

- Tangible personal property awards given for length of service or safety achievement generally excludable from income
 - Must be given for length-of-service or safety
 - Must be awarded as part of a meaningful presentation
 - Cannot be disguised wages
- Qualified plans
- Dollar limitations
 - \$400 for awards made under a nonqualified plan; or
 - \$1,600 in total for awards made under both qualified and nonqualified plans
- Excess amounts

Gifts to Employees

- Cash and cash equivalents
 - Cash awards to employees are always taxable subject to W-2 reporting
 - Exception: Occasional meal or transportation money to enable an employee to work an unusual, extended schedule
- Gift certificates
 - Redeemable for general merchandise
 - Are not de minimis benefits and are taxable
 - Redeemable for specific item of personal property
 - Excludable if:
 - Minimal in value
 - Infrequent
 - Administratively impractical to account for

Key Areas of Focus

Employment Taxes – Hot Button Issues

- Independent contractor/employee misclassification
 - IRS position
- Employee benefits
 - Conversion to taxable income
 - Have you
- Tax information reporting
 - Reporting all elements of income
- State payroll issues
 - States are becoming much more aggressive
 - Timing thresholds
 - Remote employees



Thank You

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