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2019 Repeal of the Affordable Care Act's Individual Mandate Penalties

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Insight — 12/22/2017

The Tax Cut and Jobs Act of 2017 (“Tax Act”) was signed into law by the President this morning. The Tax Act sailed through Congress in record time and has many features that go into effect as of January 1, 2018. However, the provisions of the Tax Act that affect healthcare coverage under the Affordable Care Act are delayed until 2019.

Background

The Affordable Care Act (“ACA”) consists of two mandates: (1) the individual mandate and (2) the employer mandate. The ACA generally requires that individuals obtain health care coverage during the year or pay a shared responsibility payment known as the individual mandate penalty. The individual mandate penalty is generally calculated as the cost of purchasing the lowest premium healthcare coverage available on the applicable Health Marketplace (Obamacare Exchange) or, if less, a monthly flat dollar penalty amount. The monthly flat dollar penalty amount varies based on family size and household income, but the single individual adult minimum monthly flat dollar penalty amount was \$57.91.

Tax Act Repeals the Penalties for the Individual Mandate

The employer mandate (a/k/a employer shared responsibility payment) has not been modified by the Tax Act, but the individual mandate penalty has been reduced to zero for years after 2018. Thus, effective for years after December 31, 2018, the Tax Act effectively eliminates the individual mandate penalties. Accordingly, beginning in 2019, the government will no longer attempt to collect the individual mandate penalties if an individual or family does not obtain healthcare coverage in 2019 and thereafter. The elimination of the penalties does not technically remove the requirement to obtain healthcare coverage. But without penalties there will be no enforcement and, in effect, no practical mandate to obtain coverage for 2019 and later years.

Reporting

The IRS requires an employer or insurance company to report on Form 1095 whether an individual had ACA compliant coverage for the tax year. Individuals use the information on Form 1095 to substantiate healthcare coverage for themselves and any covered family members on the individual's federal income tax return (Form 1040) for that tax year, in

order to avoid paying the individual mandate penalty for the year. Employer reporting on Form 1095 was not eliminated by the new Tax Act, but it is possible that Form 1095 will be modified or eliminated for 2019 and later tax years, since it will have no practical application going forward.

Note: The IRS just announced a 30-day extension of the 2018 due date to provide Form 1095 to individuals for the 2017 reporting year. Form 1095 now must be provided to applicable individuals no later than March 2, 2018. This extension for Form 1095 distribution is automatic, and does not apply to the deadlines for employer reporting to the IRS, which remain as February 28, 2018 for paper filers, and April 2, 2018 for electronic filers.

Takeaways

For 2017 and 2018, nothing has changed with respect to the ACA individual mandate or reporting on IRS Form 1095. In addition, the elimination of the individual mandate penalty in 2019 does not technically eliminate the requirement to have healthcare coverage, it only eliminates the penalty. This change could indirectly impact employers. If fewer employees obtain coverage on the ACA Exchanges and the related government subsidies, the employer's penalty risk under the ACA employer mandate will decrease. On the other hand, the lack of an individual mandate may further destabilize the ACA Exchanges, resulting in potentially more employees looking to their employer to obtain healthcare coverage that may no longer be affordable on the Exchanges. Stay tuned for further modifications to the ACA as 2019 approaches.

If you would like more information, please feel free to contact one of our benefits attorneys.

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