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Affordable Care Act Tasks:

Preparing for the Shared Responsibility Excise Tax

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Today's Material

- Our assumptions for today:
  - Calendar-year plan
  - "Play" decision
  - True MV plan/affordable coverage with W-2 safe harbor
  - 12-month initial measurement for new variable/part-time/seasonal employees
  - 12-month ongoing measurement period calculated in the middle of each October
- We will briefly discuss variations to the assumptions

Today’s Material

- Excise Tax—destination check
  - How it works
  - Which employees it applies to
  - Practical observations
- Reporting—future travel
  - General rules
  - Individual mandate
  - Employer mandate
  - Practical observations

Excise Tax

Excise Tax

- Destination check
  - Should be just about ready for takeoff 1.1.2015:
    - *Plan is good enough/affordable*
    - *Who are our Affordable Care Act (ACA) full-time (FT) employees?*
      - Wrap into open enrollment or handle through special enrollment in December
    - *When are new employees treated as ACA FT employees during 2015?*

Excise Tax

No Coverage Penalty	Inadequate Coverage Penalty
If employer does not offer Minimum Essential Coverage to 95% of its FT employees	If employer offers coverage to its FT employees, but the coverage is not Affordable and/or does not provide Minimum Value
AND One FT employee enrolls in an Exchange <u>and</u> receives a subsidy	
Employer must pay penalty of: $2,000 (indexed) for <u>all</u> FT employees (less 30) (including those receiving coverage)	Employer must pay penalty of: $3,000 (indexed) for each FT employee receiving a subsidy (capped at the maximum No Coverage Penalty)

Excise Tax

- For 2015 only:
  - 50-employee threshold increased to 100 employees
    - *Employers with >50 but <100 FT employees are exempt*
  - 95% requirement relaxed to 70%
  - “Less 30” expanded to “less 80” for “No Coverage” penalty
    - *Close to irrelevant for any employer of size*
  - Special rules allowing use of less than 12 months of data to get ready for 2015
  - “Working on” extending coverage to children in 2016

Excise Tax

- No Coverage penalty—offer to:
  - At least 95% of all FT employees (and their children in 2016) or at least 70% for 2015
    - *FT employee = 30+ hours per week (130+ hours per month)*
    - *Children excludes foster children and stepchildren*
      - Must offer coverage through end of month in which child attains age 26
      - Excludes children who are not citizens or residents of the U.S.
        - » But includes children resident in Canada or Mexico
  - Qualifying coverage . . .
    - *"Minimum Essential Coverage" (basically any ER-sponsored plan)*

Excise Tax

– Or pay:

- *$2,000 times all FT employees (minus 30; but minus 80 for 2015 only)*
  – Note: employers that have less than 30 FT employees (or 80 for 2015) will pay no penalty

– Only applies if one FT employee enrolls in Exchange and receives a subsidy (tax credit or cost-sharing reduction, called a "Section 1411 Certification")

  – No subsidy available if:

    » Eligible for Medicaid (100%-133% of federal poverty level)

    » Household income is more than 400% of federal poverty level

Excise Tax

- *Calculated on ALL FT employees of each controlled group member separately*
  - Applied separately to each controlled group member
    - » Limits scope of penalty to only part of controlled group

– Offer includes offer of coverage from

- *Multiemployer/single-employer Taft-Hartley plans*
  - Additional interim guidance for near future
- *PEOs (if client pays more for the offered coverage)*
- *MEWAs*

Excise Tax

- *Includes Evergreen offers*
- *Offer by one controlled group member satisfies obligation for all members*
  - Useful for large single plan across the entire controlled group
- *No specific rules for demonstrating an offer was made*
  - Limited "no offer" opportunity for coverage providing minimum value that is free or meets Federal poverty level affordability safe harbor
  - Consider retaining proof of offer/opt out if used an active enrollment process for 2015

Excise Tax

- Inadequate Coverage—offer to:
  - All FT employees (and their children in 2016)—or fail to offer to up to 5% (up to 30% in 2015) of FT employees
    - *FT employee = 30+ hours per week (130+ hours per month)*
    - *Children excludes foster children and stepchildren*
      - Must offer coverage through end of month in which child attains age 26
      - Excludes children who are not citizens or residents of the U.S.
        - » But includes children resident in Canada or Mexico

Excise Tax

- Qualifying coverage
  - *Is "Minimum Essential Coverage" and*
  - *Provides "Minimum Value"*
- That is affordable
  - *Not more than 9.5% of household income for employee-only coverage*
  - *Safe harbors*
    - Rate of pay
    - W-2
    - Federal poverty level

Excise Tax

– Or pay:

- *$3,000 per FT employee who receives subsidy (Section 1411 Certification) for Exchange coverage (capped at maximum No Coverage penalty)*
- *No subsidy available if*
  – Eligible for Medicaid (100%-133% of federal poverty level)
  – Household income is more than 400% of federal poverty level
- *Applied separately to each controlled group member*
  – Limits scope of penalty to only part of controlled group

Excise Tax

- Who is an employee?
  - Common-law employee
    - *More on this later*
  - Average 30 hours of service/week
    - *For nonhourly employees, 8 hours/day or 40 hours/week equivalencies*
    - *130 hours/month can be used*
  - Determined on a controlled group basis
    - *Very challenging for transfers within a controlled group*

Excise Tax

- Determination of FT status
  - *Under statute, this is determined monthly on an ongoing basis*
    - Final rules contain details and procedures for determining status on a monthly basis
      - » Plugs some of the prior holes applicable to monthly determinations
      - » Very complicated final rules for when individuals move between different methods of determining status over their careers
        - » Special phased retirement (and similar situations) rule
    - Employees whose status is clearly full time when hired must be offered coverage within 3 months of hire

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Excise Tax

– Voluntary safe harbor method for new variable hour, seasonal, and part-time employees

  - *Permits employers to calculate employee hours during an initial measurement period (3-12 months after employment) and lock in the resulting status for the following stability period (6-12 months)*
  - *Employer can define periods, subject to consistency, based on categories of employees (i.e., salaried/hourly, union/nonunion, different entities, different states)*
  - *Short (less than 2 months) administration period to start coverage if use full initial measurement period*
  - *Complicated to track and implement*

Excise Tax

– Voluntary safe harbor method for ongoing employees

- *Permits employers to calculate employee hours during a consistent ongoing measurement period (3-12 months) and lock in the resulting status for the following stability period (6-12 months)*
- *Employer can define periods, subject to consistency, based on categories of employees (i.e., salaried/hourly, union/nonunion, different entities, different states)*
- *Likely tied to open enrollment process and timing*
- *90-day administration period to start coverage*
- *Must transition new variable hour, seasonal, and part-time employees to this ongoing measurement process*

Excise Tax

- Contingent Workers
  - Variations
    - *“Kelly Girl” temporary staffing*
    - *Leasing Organization (co-employment)*
    - *Payrolling Organization (co-employment)*
    - *Independent Contractor*
  - Are they common-law employees?
    - *Who has the right to control both the result of the work and the means to accomplish the result?*
    - *Old question; new consequences*

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Excise Tax

- Employee benefit rules never really bought into co-employment
- Shared Responsibility rules focus on common-law employment status
- Common-law employer shoulders the Shared Responsibility burden
  - *Cannot (usually) take advantage of an offer of health coverage from an unrelated employer*
  - *But, contract terms CAN allow common-law employer to take advantage of leasing organization's offer of health coverage*

Excise Tax

– Final regulations to the rescue!

– If ACA-compliant health plan is offered to employee by leasing organization, this is treated as an offer by common-law employer ***only*** if

- *Fee paid to leasing organization “is higher” than fee paid for same employee if employee did not enroll in health coverage (Final Reg. Section 54.4980H-4(b)(2))*
- *Unclear if paying less for employees who reject coverage is also permissible*

Excise Tax

– Also want to ensure that contract terms:

  - *Require leasing organization to comply with ACA and offer health coverage that is good enough and affordable to ACA FT employees; and*
  - *Indemnify common-law employer if leasing organization's failure to satisfy ACA causes Shared Responsibility exposure for common-law employer*

Excise Tax

- Practical observations:
  - “No brainer” for some employers—a “bet the business” issue for others
    - *Variations based on workforce composition and business structure*
  - May be some leeway to “risk” Inadequate Coverage penalty if offer coverage to 70% or more of the ACA FT employees in 2015
    - *Buys a bit more time for leased employee and other “counting” issues*

Reporting

Reporting

- Future travels
  - Objective:
    - *Help participants prove 2015 compliance with individual mandate*
      - Form 1095-B + transmittal form 1094-B = Code section 6055
    - *Show employer avoids 2015 Shared Responsibility excise tax*
      - Form 1095-C + transmittal form 1094-C = Code section 6056
        - » Additional objective: Exchange subsidy determinations
    - *Self-insured employers combine both objectives on Form 1095-C—generally!*

Reporting

– Sources:

- *Final regulations issued March 2014*
- *Forms, instructions, Q&As available—but significant questions still remain—software filing guide to come*
  - See:
    - » http://www.irs.gov/uac/Questions-and-Answers-on-Information-Reporting-by-Health-Coverage-Providers-Section-6055
    - » http://www.irs.gov/uac/Questions-and-Answers-on-Reporting-of-Offers-of-Health-Insurance-Coverage-by-Employers-Section-6056
- *Borrows some, but not all, Form W-2 processes*

Reporting

- General rules:
  - *First applies to 2015; first reported 1.31.2016*
    - Voluntary for 2014; Forms for 2014
  - *Applies to insurers, plan sponsors for group health plans*
    - Sponsors are the employer (single ER plan); each employer (MEWA); trustees (multiemployer plan)
    - Applies separately to each controlled group member (in order to individually determine Shared Responsibility compliance)
  - *Requires name, address, TIN of responsible individual AND covered dependents*
  - *Requires coverage by month*

Reporting

- *Filed on calendar year basis—even for non-calendar year plans (special rule for months in 2015 before non-calendar year employers are subject to Shared Responsibility)*
- *Filed electronically with IRS if file 250+ returns*
- *Transmittal forms for both*
  - Contains additional information
- *Penalties for noncompliance—good faith for 2015*

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Reporting

- Individual mandate
  - *Conveys receipt of minimum essential coverage*
  - *Uses Form 1095-B for insured coverage; certain other self-insured coverage that is not subject to the employer mandate (retired employees + COBRA in year 2 and beyond, etc.)*
  - *Uses Form 1095-C for self-insured coverage that is subject to the employer mandate*
    - Confusing; IRS thinks this is more efficient—but Form 1095-C is merely a mash-up and in no way streamlined
  - *In addition to general requirements, adds MEC by month for enrollees*
    - No reporting if not covered for any month in year

Reporting

– Employer mandate

- *MUCH more complicated—and not just due to combined individual mandate and employer mandate data elements for self-insured employers*
- *Only applies to employers subject to Shared Responsibility rules*
  – 2015 partial reprieve if under 100
- *Only applies to ACA FT employees*
- *Completed separately for each controlled group member*
  – Special 3rd party rules
  – Only one form per employee

Reporting

- *Special multiemployer plan rules*
- *Additional data includes:*
  - Contact person
  - Offer of coverage by month
  - Lowest-cost premium for self-only coverage
  - ACA FT employee totals by month
  - Waiting periods
  - Controlled group data
  - Multi employer data
  - Codes reflecting:
    - » Scope of offer (employee/dependents/spouse)
    - » Reasons coverage not offered
    - » Offers to individuals who are not ACA FT employees

Reporting

      » Affordability

- *Transmittal Form 1094-C requires additional data*
- *Alternate methods/simplified reporting*
  – Generally useless for many employers

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Reporting

- Practical observations
  - Determine if you or an insurer bears the burden of the individual mandate—or if the burden is shared
  - Determine which vendor can help (payroll/HRIS/TPA/combination or new vendor) with the employer mandate
  - Start saving data or ensuring that it can be accessed later in 2015
  - Don’t bank on a further delay

Questions?

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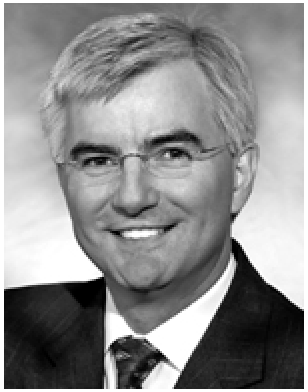

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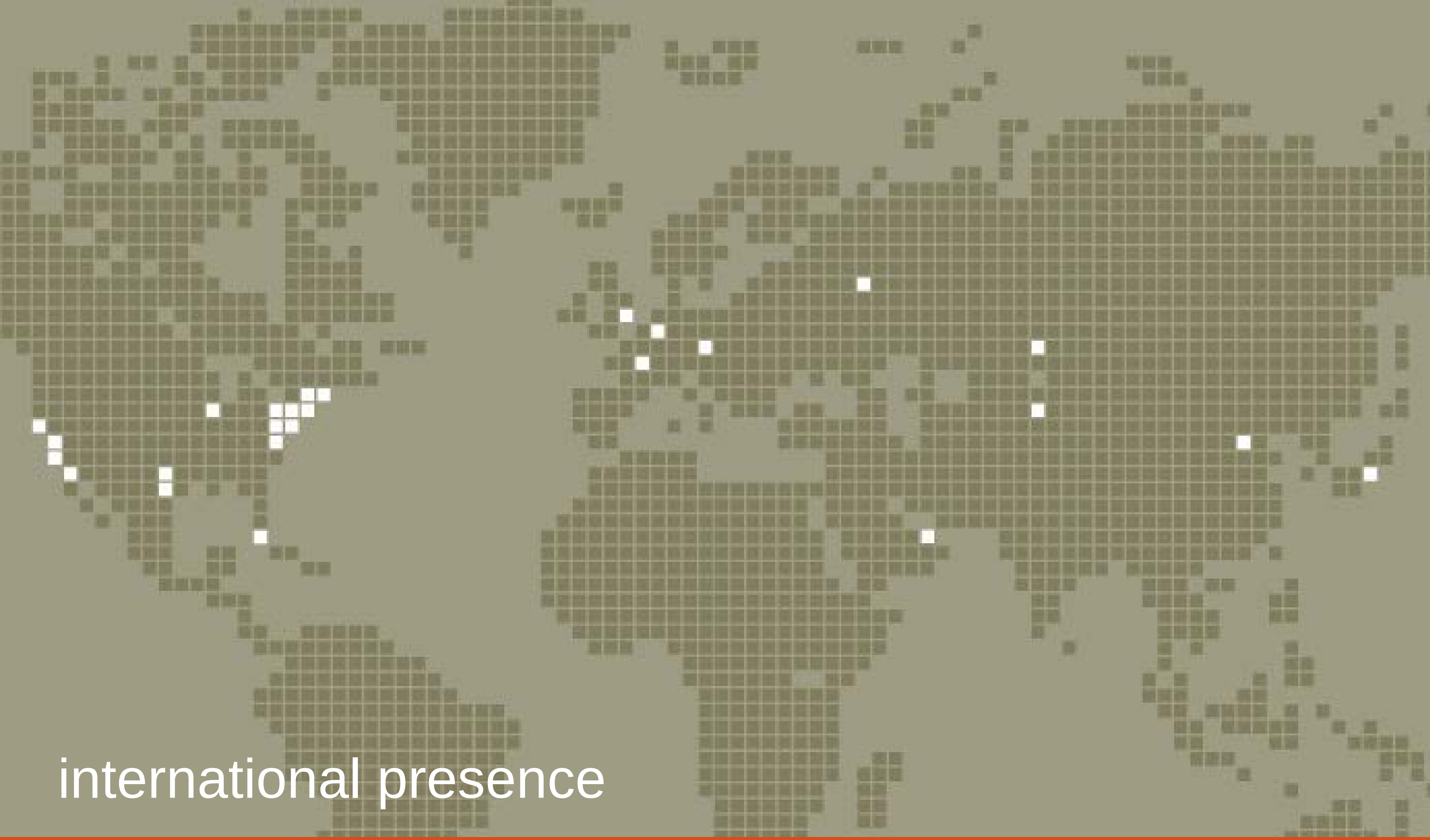

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