focus

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Getting a handle on the ACA's "play or pay" provision

Come Jan. 1, 2015, "large" employers will have to comply with what's come to be known as the "play or pay" provision of the Affordable Care Act (ACA). The original effective date of Jan. 1, 2014, was pushed back to allow health care providers and employers more time to develop and implement the systems they'll need to meet the requirements of this provision.

While the delay offers business owners some breathing room, many companies will have to do a fair amount of work this year to collect data on the makeup of their workforces and the health care benefits they offer — all of which is necessary to comply with the ACA. Once that's done, some companies will need to decide whether it makes sense to boost their health care coverage or risk the penalties they may incur if they don't — that is, to "play or pay."

Determining large employer status

The play-or-pay provision generally applies to employers that had at least 50 full-time employees, or a combination of full-timers and full-time equivalent (FTE) employees totaling 50 or more, in the preceding calendar year. Under the ACA regulations, full-time employees typically include those who work an average of at least 30 hours each week or 130 hours in a month.

All part-time employees' monthly hours are totaled and then divided by 120 to convert them to FTEs. For instance, an employer with 30 part-time employees who work 80 hours each month would have 20 FTEs (30 × 80 = 2,400; 2,400/120 = 20).

When determining whether you've hit the 50 full-timer/FTE threshold, keep these two points in mind:

1. An employee's use of Family and Medical Leave Act (FMLA) leave and certain other types of leave can't be used to reduce his or her work hours for these calculations.
2. If two or more companies share an owner or are related, they may be treated as one when determining whether the group of businesses is subject to the play-or-pay provision.

If you're unsure of how to calculate the numbers for your business, please contact your financial advisor.

Meeting health plan requirements

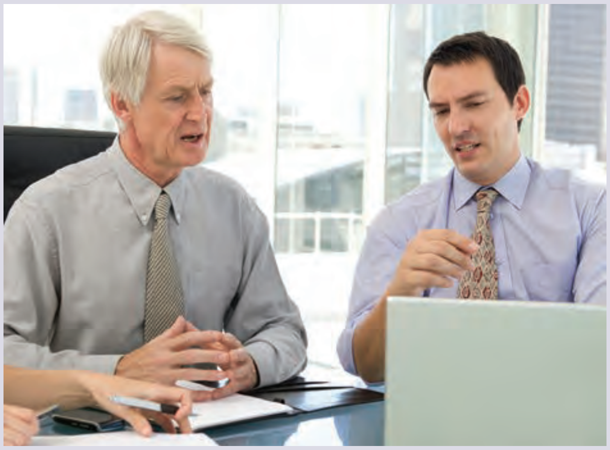
To ensure they'll avoid play-or-pay penalties, large employers must meet the health coverage requirements of the ACA, which include providing "minimum essential coverage" that is "affordable" and offers at least "minimum value." Here's how the ACA defines these terms:

Minimum essential coverage. A rather broad classification, this includes many plans that are offered in the

How the penalties work

Under the Affordable Care Act (ACA), "large" employers are penalized if one or more of their full-time employees receive a tax credit or subsidy for purchasing individual coverage through one of the new Health Insurance Marketplaces. The ACA makes available these credits and subsidies if an individual's income falls below certain levels and he or she doesn't have access to health insurance that provides "minimum essential coverage," offers at least "minimum value" and is "affordable." (See the main article for definitions of these terms.)

The penalty if an employer doesn't offer minimum essential coverage to at least 95% of full-time employees, and at least one full-timer receives a premium tax credit or subsidy, is $2,000 per year for each full-time employee in excess of 30. (In calculating the penalty, only full-time employees and not full-time equivalents are counted.) If an employer offers minimum essential coverage, but it falls short of the minimum value or affordability requirements, the penalty shifts to the *lesser* of this same penalty or $3,000 per full-time employee receiving a premium tax credit.



small- or large-group market in an employer's state. However, some limited coverage plans — say, those that cover only specific conditions — may fall short of this criterion.

To ensure they'll avoid play-or-pay penalties, large employers must meet the health coverage requirements of the ACA.

Minimum value. This criterion generally is met when the health plan picks up at least 60% of total allowed benefit costs.

Affordable. To meet this requirement, an employee's premiums — for the lowest cost, self-only plan that provides minimum essential coverage and value — must come to no more than 9.5% of his or her household income. Given the difficulty that many employers would face in assessing each employee's household income, they can instead use one of these three safe harbors: 1) The employee's annual premium is 9.5% or less of his or her W-2 wages, 2) the employee's monthly premium is 9.5% or less of his or her hourly pay rate multiplied by 130 hours, or 3) the employee's annual premium is 9.5% or less of the federal poverty level for an individual.

Action to take now

To prepare for the Jan. 1, 2015, play-or-pay effective date, employers must first determine if they're large employers under the ACA. Large employers that offer health care coverage should review their coverage options to determine if they meet the requirements of minimum coverage and value, as well as affordability. Employers that don't offer health insurance or whose coverage options don't meet the ACA's criteria should compare the cost of providing coverage to the cost of potential penalties (see "How the penalties work" above), taking into account that insurance costs are tax-deductible, but the penalties aren't.

Last, it's important to keep in mind that the ACA is subject to political uncertainties, and there is a possibility that changes may take place before Jan. 1, 2015.

Transferring family-business ownership to the next generation

There comes a time in almost every family-owned business to pass the torch to the next generation. But there are many aspects that must be carefully worked out long before the transfer actually happens. Here are just a few for you to consider.

Now or later?

To transfer the greatest wealth to your family, first decide whether to give shares immediately or at your death. In addition to $14,000 annual exclusion amounts, you can bestow up to $5,340,000 — the 2014 lifetime gift tax exemption amount — during your life without having to pay gift tax.

But the amount you give under your lifetime exemption reduces the amount you can transfer estate-tax-free at death. Plus, certain taxable gifts you've made within three years of your death are effectively brought back into your estate.

How to decide when to give? Consider not only the potential future estate tax savings, but also family income tax savings. And, remember the possible cash flow issues of having some of the company ownership, and attendant income and distributions, attributable to others.

Basis basics

Consider this scenario: Robert has heard about gifting but isn't sure it makes sense for him. In theory, he likes the idea of transferring a portion of the business to his children, but he doesn't want to relinquish control of the company. He also has heard of "step-up" in basis, or the loss of step-up, though he isn't really sure how it should affect his decision.

Here's how step-up works: If Robert owns certain property — such as his company shares and other securities — when he dies, its basis for income tax purposes steps up to the fair market value on that date (or, in certain circumstances, an alternate valuation date). But if he gifts the asset during his life, his basis carries over to the recipient, which can mean more income tax liability when the recipient sells the asset.

So, if Robert has a $1 basis in an asset and gives it to his children, they get his basis. If they sell when the asset is worth $1 million, they have a $999,999 gain. On the other hand, if Robert dies owning the asset when it is worth $1 million, and his children then sell it for the same amount, they'll have no taxable capital gain.

Of course, the $1 million would be included in John's estate and, at the highest current federal estate tax rate of 40%, be subject to a $400,000 tax (if he has no remaining estate tax exemption available). It also might be subject to state estate tax.

Giving and keeping

Because his children have consistently expressed the desire to continue running the company, Robert likes the idea of gifting shares in the business even though he realizes they won't get a step-up in basis on those shares.

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Besides, his other assets include long-held securities that have appreciated significantly. It's more likely the children would sell those assets after his passing — and benefit from a step-up in basis on them — particularly if they needed liquidity for estate tax purposes. So it seems more prudent to Robert to focus on giving company shares and keeping the other assets.

He therefore decides to give each child a 10% interest in his company. Not only does this meet his objective of keeping control, but he learns that, as a bonus, the shares are probably eligible to be discounted for gift tax valuation purposes.

Let's say a formal valuation determines that a 30% discount is appropriate for his company's shares. Using the gifted shares' $4.5 million discounted value, Robert is able to make the gifts without fully expending his lifetime gift tax exemption.

Think it through

If you're wrestling with the thought of giving your heir(s) the reins to your business, don't fret. Your tax, business and estate planning advisors can help you work through the multiple decisions that must be made when turning over a family business to a successor. ◈

Personal financial accounts: Is it time to consolidate?

Over time, many people accumulate multiple bank, investment and other financial accounts. While that's often a natural byproduct of financial success, whittling down the number of accounts you have can offer several benefits.

Knowing what you have

You'll likely spend less time tracking and reconciling your financial activities (and be less tempted to put off these tasks) if you keep it simple. And, staying up to date on your personal recordkeeping should, in turn, give you a better handle on your finances, allowing you to make more-informed saving and spending decisions.

A recent study at the University of Kansas found that people tend to save more when they work

with a single bank account. The reason? Hanging onto multiple accounts can make it more difficult to know exactly how much you have in total. If you have only a vague idea of your financial status, you might overestimate what you have and more easily rationalize spending what you otherwise might find difficult to justify.

Managing fewer accounts also can reduce the risk that you'll bounce checks or incur overdraft fees simply because you mistook the balance available in one checking account for that in another. You also may see a reduction in fees.

Consolidating investment accounts not only may help you gain a better handle on just how your money is invested, but also can help ensure that your overall portfolio aligns with your financial goals. In addition, consolidating accounts with fewer financial advisors may make it easier to keep them interested in your financial well-being.

The consolidation process

Once you've decided to reduce the number of financial accounts you hold, you must identify which ones to close and which ones to keep open. Typically, the ones that remain should have lower fees and/or better returns and service.

Before closing any accounts, halt any automatic payments or deposits. This will allow you to direct them to the accounts you're maintaining. Keep in mind that this process can take weeks. Moreover, don't overlook any automated transactions, because some banks may reopen closed accounts if they later receive an automatic deposit or withdrawal. Also destroy any checks or debit cards and close any lines of credit or features (such as overdraft protection) tied to the accounts you're closing.

Last, inform financial institutions holding the accounts that you're closing them, and ask to receive any moneys that remain. Obtaining a letter from the institution stating that the account is closed can help clear up any disputes that may occur.

Limits to consolidation

While reducing the number of accounts you have to a reasonable number often makes sense, don't overdo it. For instance, if consolidating several bank accounts into one means that your balance will exceed the amount insured by the Federal Deposit Insurance Corporation (FDIC) — generally, $250,000 per depositor, per insured bank, for each account ownership category — maintaining more than one account might be the prudent course of action.

And, when different investment accounts will go to different beneficiaries, it may be best to keep them separate. That way, the investment objectives of each can be tailored to the particular beneficiary.

And, last, if you have a business, you should maintain separate business and personal accounts.

Take a comprehensive look

Even when it makes sense to maintain multiple accounts, be sure to regularly take a comprehensive look at them. You may want to harness the power of your financial advisor. He or she can provide an accurate, thorough view of your total balances and suggest ways to determine how your funds are saved and spent. That can boost your ability to make smart financial decisions. ◈

Why you still need a credit shelter trust

Some married couples may be thinking that, with estate tax exemption portability between spouses now permanent, they no longer need credit shelter trusts. But for many well-to-do couples, that's not the case: Credit shelter trusts can offer substantial benefits that exemption portability doesn't.

Leveraging exemptions

Before exemption portability, the primary purpose of credit shelter trusts was to ensure that a married couple could take maximum advantage of both members' estate tax exemptions without having to transfer significant amounts of assets to their children (or other beneficiaries) on the first spouse's death. Instead, assets of the first spouse to die — up to the exemption amount — would be transferred (tax-free under the marital deduction) to a credit shelter trust benefiting the surviving spouse.

The estate tax exemption protection applies not just to the dollar amount that's initially transferred to the trust, but to any future growth in the trust as well.

The trust would distribute its income (and in certain limited circumstances, some principal) to the surviving spouse for life. Upon the survivor's death, the trust assets would pass tax-free to the children under the first spouse's estate tax exemption — leaving the survivor's exemption available to transfer some or all of his or her own assets tax-free.

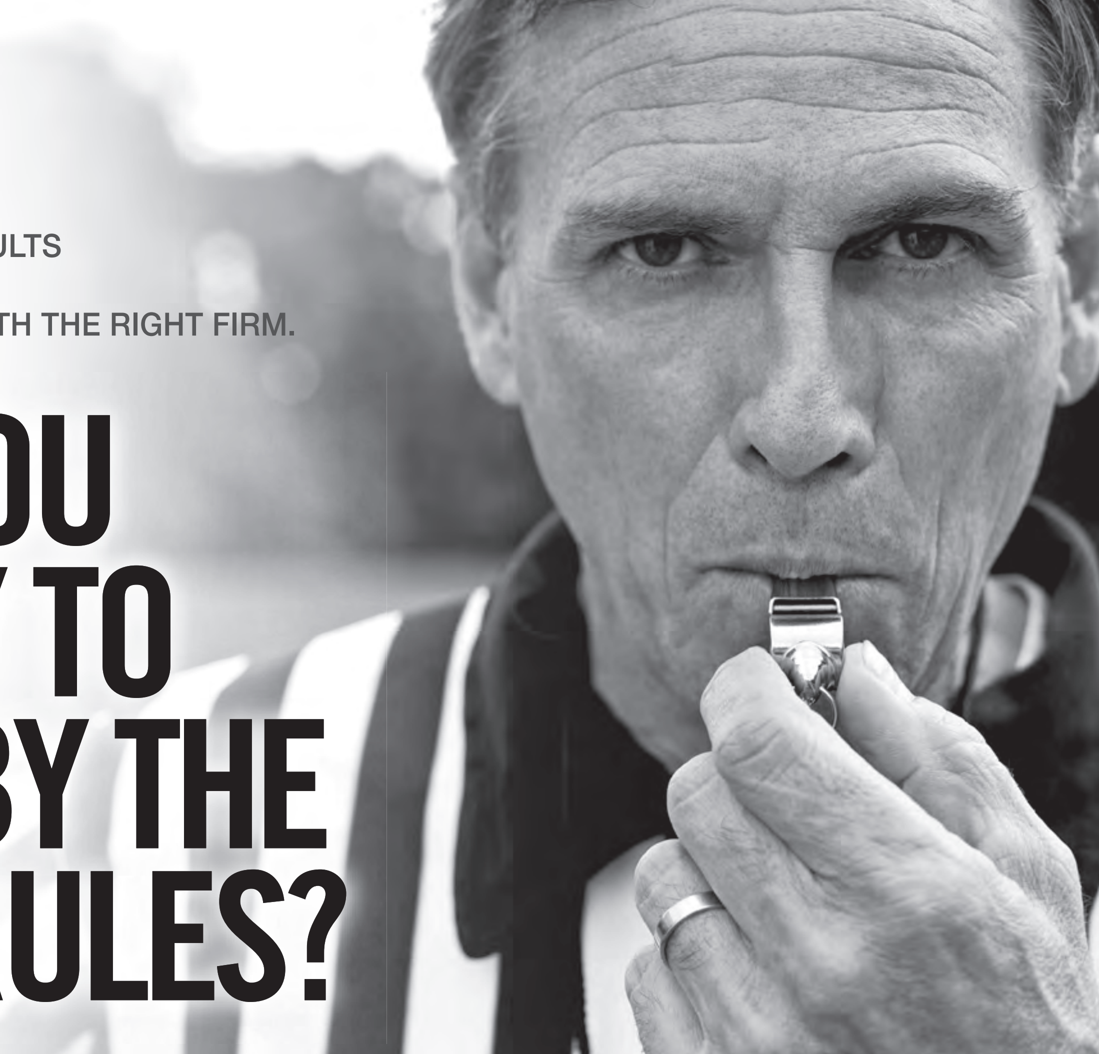
Since 2010, exemption portability has allowed a surviving spouse to use any of his or her deceased spouse's unused estate tax exemption — provided an election is made on a properly filed estate tax return. This means that all of the assets of the first spouse to die can be transferred directly to the surviving spouse without sacrificing the first spouse's exemption. So a credit shelter trust isn't necessary simply to preserve that exemption.

However, a credit shelter trust can still allow a couple to transfer more assets tax-free. How? The estate tax exemption protection applies not just to the dollar amount that's initially transferred to the trust, but to any future growth in the trust as well.

For example, let's say you have $5 million of exemption available at your death, and a credit shelter trust is funded with that amount. Now let's imagine that your spouse dies 10 years later, and by that time the trust has grown to $7.5 million. The entire $7.5 million can pass tax-free to your children — without using up any of your spouse's exemption.

Other benefits

While the ability to leverage your exemption may be the biggest benefit of a credit shelter trust post-portability, it does offer other advantages over portability as well, such as creditor protection, generation-skipping transfer tax planning opportunities and preservation of state exemptions. So even with portability available, you may still need a credit shelter trust to achieve your estate planning goals. ◈



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THE RIGHT RESULTS

ACHIEVED WITH THE RIGHT FIRM.

ARE YOU READY TO PLAY BY THE NEW RULES?

The rules of the tax game have changed relating to expenditures, and you need to be prepared for their impact.

Recently issued regulations from the IRS dictate when payments can be deducted immediately and when they must be capitalized and depreciated. The professionals at Zinner & Co. can assist your business in both complying with the regulations and identifying opportunities to generate tax savings.

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Our Tax Services are designed to help businesses successfully contend with the myriad of federal, state, and local tax laws.

We can assist in identifying areas of potential exposure, as well as to uncovering legitimate opportunities for reducing your overall tax burden.

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