Shared Responsibility for Employers

**Summary:** If an employer with more than 50 full-time employees does not offer health insurance and at least one full-time employee receives the premium assistance tax credit to assist with receiving health insurance through the Exchange, then the employer must pay an excise tax of $166.67 per month ($2,000 per year) for each full-time employee (not including the first 30 employees). If an employer with more than 50 employees that does offer coverage but has at least one full-time employee receiving the premium assistance tax credit to assist with receiving health insurance through the Exchange, then the employer will pay an excise tax that is the lesser of $250 per month ($3,000 per year) for each of those employees receiving a tax credit or $166.67 for each of their full-time employees total (not including the first 30 employees).

**Status Update:** On May 3, 2011, the Treasury Department and Internal Revenue Service (IRS) requested public comment on issues relating to the shared responsibility provisions included in the Affordable Care Act that will apply to certain employers starting in 2014. In particular, the notice requests comment on possible approaches employers could use to determine who is a full-time employee. Comments are due June 17, 2011.

**Next steps:**
- May 3, 2011 – The Treasury Department and IRS requested public comments regarding this provision.
- June 17, 2011 – Comments due to the May 3, 2011 Treasury Department and IRS request.
- January 1, 2014 – Provision goes into effect

**Additional information:**
- Mercer study indicating that 1/3 of employers may provide “unaffordable” coverage -- [http://www.mercer.com/summary.htm?idContent=1378875](http://www.mercer.com/summary.htm?idContent=1378875)
- Kaiser Family Foundation document regarding the “pay or play” responsibility -- [http://www.kff.org/healthreform/upload/7907.pdf](http://www.kff.org/healthreform/upload/7907.pdf)
**Long summary:**

Sec. 1513. Shared responsibility for employers (as modified by sec. 10106 and sec. 1003 of HCERA).

Effective January 1, 2014, applicable large employers are subject to an assessment (excise tax) for a month if at least one employee receives a premium tax credit for coverage through the Exchange.

**Definition of applicable large employer.** Applicable large employers are defined as those with an average of 50 or more full-time employees in the preceding year, unless the employer exceeds 50 employees for 120 days or fewer during the year as a result of hiring seasonal workers. New employers are included if it is reasonably expected that they will average 50 or more employees during the year. In determining whether the employer is an applicable large employer, the contribution of part-time employees is to be counted towards the 50 employee threshold by summing the total number of monthly hours of part-time employees and dividing by 120. Full-time employee defined with respect to a month as one employed on average at least 30 hours per week. The Secretary of Treasury, in consultation with the Labor Secretary, is to issue guidance and regulations as needed to determine hours of service of an employee, including rules for treatment of employees not compensated by the hour.

**Exceptions.** Employers are not subject to the employer penalty for a month with respect to any employee to whom a free choice voucher is paid under sec. 10108. No assessment is made in the case of an employee who enrolls in Medicaid.

**Amount of excise tax – No offer of coverage.** Applicable large employers that do not offer minimum essential coverage to full-time employees and their dependents must pay the excise tax if at least one full-time employee receives a premium tax credit or cost sharing reduction for health insurance through a state Exchange. The tax is to equal $166.67 a month (1/12th of $2,000) times the total number of the firm’s full-time employees reduced by 30 employees.

**Amount of excise tax – Offer of coverage.** An excise tax is also imposed on an employer that offers minimum essential coverage to full-time employees and their dependents if one or more full-time employees qualifies for the premium tax credit through the Exchange because the employer does not offer minimum essential coverage, or the coverage is determined to be unaffordable to the employee, as defined under section 1401. In this case, the monthly tax is $250 (1/12th of $3,000) per subsidized employee, capped, in aggregate, at $166.67 a month (1/12 of $2,000) times the total number of full-time employees reduced by 30 employees.

**Excise tax increases.** All amounts are indexed after 2014 to the national increase in average per capita premiums, rounded to the next lowest $10.

**Other rules.** The excise tax is not deductible for income tax purposes. Payments are due upon notice and demand by the Secretary of Treasury who has discretion regarding whether payments are collected monthly, annually or otherwise, and who must develop process for cases in which the excise tax is assessed on an employer with respect to a tax credit eligible employee who later is deemed ineligible.

**DoL Study.** Requires the Secretary of Labor to conduct a study using the National Compensation Survey to determine whether employees' wages are being reduced as a result of the shared responsibility taxes imposed on employers. Report due to the House Ways and Means and Senate Finance Committees.
**Legislative text:**

SEC. 1513. SHARED RESPONSIBILITY FOR EMPLOYERS.
(a) IN GENERAL.—Chapter 43 of the Internal Revenue Code of 1986 is amended by adding at the end the following:

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SEC. 4980H. SHARED RESPONSIBILITY FOR EMPLOYERS REGARDING HEALTH COVERAGE.

(a) LARGE EMPLOYERS NOT OFFERING HEALTH COVERAGE.—
If—
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(1) any applicable large employer fails to offer to its fulltime employees (and their dependents) the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan (as defined in section 5000A(f)(2)) for any month, and
(2) at least one full-time employee of the applicable large employer has been certified to the employer under section 1411 of the Patient Protection and Affordable Care Act as having enrolled for such month in a qualified health plan with respect to which an applicable premium tax credit or cost-sharing reduction is allowed or paid with respect to the employee, then there is hereby imposed on the employer an assessable payment equal to the product of the number of full-time employees of the applicable large employer described in subparagraph (B) for such month and an amount equal to 1/12 of $3,000.
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(A) IN GENERAL.—The term ‘full-time employee’ means, with respect to any month, an employee who is employed on average at least 30 hours of service per week.

(B) HOURS OF SERVICE.—The Secretary, in consultation with the Secretary of Labor, shall prescribe such regulations, rules, and guidance as may be necessary to determine the hours of service of an employee, including rules for the application of this paragraph to employees who are not compensated on an hourly basis.

(5) INFLATION ADJUSTMENT.—

(A) IN GENERAL.—In the case of any calendar year after 2014, each of the dollar amounts in subsection (b) and paragraph (1) shall be increased by an amount equal to the product of—

(i) such dollar amount, and

(ii) the premium adjustment percentage (as defined in section 1302(c)(4) of the Patient Protection and Affordable Care Act) for the calendar year.

(B) ROUNDING.—If the amount of any increase under subparagraph (A) is not a multiple of $10, such increase shall be rounded to the next lowest multiple of $10.

(6) OTHER DEFINITIONS.—Any term used in this section which is also used in the Patient Protection and Affordable Care Act shall have the same meaning as when used in such Act.

(7) TAX NONDEDUCTIBLE.—For denial of deduction for the tax imposed by this section, see section 275(a)(6).

(d) ADMINISTRATION AND PROCEDURE.—

(1) IN GENERAL.—Any assessable payment provided by this section shall be paid upon notice and demand by the Secretary, and shall be assessed and collected in the same manner as an assessable penalty under subchapter B of chapter 68.

(2) TIME FOR PAYMENT.—The Secretary may provide for the payment of any assessable payment provided by this section on an annual, monthly, or other periodic basis as the Secretary may prescribe.

(3) COORDINATION WITH CREDITS, ETC.—The Secretary shall prescribe rules, regulations, or guidance for the repayment of any assessable payment (including interest) if such payment is based on the allowance or payment of an applicable premium tax credit or cost-sharing reduction with respect to an employee, such allowance or payment is subsequently disallowed, and the assessable payment would not have been required to be made but for such allowance or payment.

(c) STUDY AND REPORT OF EFFECT OF TAX ON WORKERS’ WAGES.—

(1) IN GENERAL.—The Secretary of Labor shall conduct a study to determine whether employees’ wages are reduced by reason of the application of the assessable payments under section 4980H of the Internal Revenue Code of 1986 (as added by the amendments made by this section). The Secretary shall make such determination on the basis of the National Compensation Survey published by the Bureau of Labor Statistics.

(2) REPORT.—The Secretary shall report the results of the study under paragraph (1) to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to months beginning after December 31, 2013.