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# ***IRS introduces new forms to meet Affordable Care Act reporting requirements***

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## ***In brief***

The Internal Revenue Service (IRS) recently issued proposed regulations under Section 6056 which was added to the Internal Revenue Code by the Affordable Care Act. Section 6056 requires employers to report certain information on full-time employees to assist the IRS in determining whether an employer is subject to the Section 4980H excise tax. This excise tax will be assessed against large employers failing to offer minimum essential health coverage to their employees or providing health coverage which is not affordable.

Section 6056 also requires employers to furnish related statements to their full-time employees. The proposed regulations describe new Forms 1094-C and 1095-C that will be used to collect and report this information. Although the first Forms 1095-C will not be issued until January 2016, employers must start planning now for how the required information will be acquired, and how and by whom it will be reported.

Further, the IRS is requesting input from employers on changes that can reduce the burdens of information collection and promote ease of administration. Thus, employers have an opportunity to help shape the reporting process.

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## ***In detail***

### ***Background***

The proposed regulations require large employers to file a new information report to demonstrate that they are not subject to the Section 4980H excise tax. For Section 4980H purposes, a 'large employer' is an employer with at least 50 full-time employees. For this purpose, a full-time employee is an employee who works an average of 30 hours per week.

Special rules aggregate part-time workers for purposes of determining whether the employer is a large employer. Thus, an employer with fewer than 50 employees who work more than 30 hours a week may be considered a large employer for Section 4980H purposes if the number of its 'full-time equivalent' employees plus the number of employees who average 30 hours a week exceeds 50.

Section 4980H is generally effective after December 31, 2013, but Notice 2013-45 (July 9, 2013) provides transition relief for 2014.

### ***ALE members***

The proposed regulations also subject applicable large employer (ALE) members to reporting. Section 4980H aggregates employers in the same corporate structure, such as parents and subsidiaries, into a single employer for purposes of determining ALE status.

However, each member of the corporate structure is treated separately for reporting purposes.

A similar approach was adopted with respect to liability for the excise tax under the Section 54.4980H of the proposed regulations. Thus, parents and subsidiaries are aggregated for purposes of determining whether an entity is an ALE member, but are disaggregated for liability and reporting purposes.

These rules impose excise tax liability and Section 6056 reporting on the common law employer in the same way employment taxes are imposed. While a single consolidated income tax return may be filed for a parent and its subsidiaries, each entity is separately liable for employment taxes and wage reporting with respect to its common law employees.

The proposed regulations note that ALE members in an aggregated group could have the ALE member that operates the employer-sponsored plan file returns and furnish statements in the name and employer identification number (EIN) of each ALE member. In addition, the proposed regulations provide that ALE members are permitted to contract with third parties to facilitate the filing of returns and the furnishing of employee statements to comply with Section 6056. However, the proposed regulations make clear that “such contractual arrangements would not transfer the potential liability of the ALE member for the failure to report and furnish under section 6056 and the regulations and, or the ALE member’s potential liability under section 4980H.”

The failure to comply with the return filing and statement furnishing requirements of Section 6056 may result in penalties for failure to file a correct information return under

Section 6721 and failure to furnish correct payee statements under Section 6722. These penalties do not apply where reasonable cause is established.

### ***The general method of reporting***

The proposed regulations provide a general method of reporting which can be used by all ALE members required to report under Section 6056. The required procedures mirror the Forms W-2 and W-3 requirements followed by employers each year. Specifically, the proposed regulations provide that a separate return is required for each full-time employee, accompanied by a single transmittal form for all of the returns filed by the employer for a given calendar year.

The Section 6056 returns can be made on Form 1094-C (a transmittal) and Form 1095-C (an employee statement), or other forms the IRS may designate. The employee statements must be furnished to the individual employee before January 31 of the year following the year to which it relates. Returns filed with the IRS are due no later than February 28 (March 31 if filed electronically) of the year following the year to which the return relates.

The proposed regulations require six pieces of information to be reported using the general method:

- the name, address, and EIN of the ALE member, the name and telephone number of the ALE’s contact person, and the calendar year for which the information is reported
- a certification as to whether the ALE member offered to its full-time 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)), by calendar month

- the number of full-time employees for each month during the calendar year
- the months during the calendar year for which coverage under the plan was available for each full-time employee
- each full-time employee’s share of the lowest cost monthly premium (self-only) for coverage providing minimum value offered to that employee under an eligible employer-sponsored plan (by calendar month)
- the name, address, and taxpayer identification number of each full-time employee who is employed during the calendar year and the months, if any, during which the employee is covered under an eligible employer sponsored plan.

In addition to this information, the IRS anticipates that, under the general method, as many as nine additional items of information may be required with respect to the ALE member and four additional items of information may be required with respect to employees by the use of indicator codes similar to the coding used, for example, in Boxes 12 or 13 of Form W-2.

### ***Proposals to simplify reporting***

In addition to the general method, the preamble of the proposed regulations discusses several other methods under consideration by the IRS for reporting the required information. As a general matter, the IRS seeks to use existing W-2 reporting where possible to accomplish this required reporting.

The IRS recognizes all of the information required to be reported

using the general method may not be required in all situations. Therefore, reporting under a simplified method may apply to some employees with the employer continuing to use the general method in cases where simplified reporting is not available. Specifically, the IRS is considering the following simplified reporting methods:

- the elimination of Section 6056 employee statements in favor of Form W-2 reporting for certain groups of employees who are offered coverage
- the lack of need to determine full-time employees if minimum value coverage is offered to all potentially full-time employees

- the offering of mandatory no-cost minimum value coverage for employees, their spouses, and dependents by self-insured employers
- the voluntarily reporting of Section 6056 elements during or prior to the year of coverage
- the reporting for employees potentially ineligible for the premium tax credit
- the combination of simplified reporting methods

The IRS is seeking comments on these and other possible simplified reporting methods. The comment period ends November 10, 2013 followed by a public hearing on November 18, 2013.

### ***The takeaway***

Employees working on January 1, 2015 with or without healthcare coverage will create reporting requirements for their common law employers. These reporting requirements will likely be complex and burdensome. Because the required information may not be readily available, advance preparation by employers is necessary. Even those employers choosing not to provide healthcare coverage need to consider what their reporting obligations will be, what changes need to be made to meet these obligations, and whether changes to their corporate structures can mitigate possible excise tax exposure and reporting burdens.

### ***Let's talk***

For more information, please contact a member of your PwC engagement team or one of the individuals listed below:

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