
Employer Medical Reimbursement/Payment of Individual Health Insurance Premiums

By Marc S. Wise

The U.S. Departments of Treasury, Labor, and Health & Human Services (“Government”) recently provided additional guidance under the Affordable Care Act (“ACA”) relating to the reimbursement by employers of individual health insurance policies.

The Problem

The position of the Government is that the payments by employers for individual health insurance policies for employees (“Employer Payment Plans”) are group health plans under the ACA and is subject to the prohibition on annual limits and coverage for preventive services. The Employer Payment Plans cannot be aggregated with the individual health insurance policy to avoid this requirement. An employer can, however, continue to use such plans as it relates to the employer’s group insurance plan.

On November 6, 2014, the Government issued a series of frequently asked questions (FAQ) relating to the Affordable Care Act. FAQ 1 addressed the issue of the employer’s payment for individual policies and states as follows:

Q1: My employer offers employees cash to reimburse the purchase of an individual market policy. Does this arrangement comply with the market reforms?

No. If the employer uses an arrangement that provides cash reimbursement for the purchase of an individual market policy, the employer’s payment arrangement is part of a plan, fund, or other arrangement established or maintained for the purpose of providing medical care to employees, without regard to whether the employer treats the money as pre-tax or post-tax to the employee. Therefore, the arrangement is group health plan coverage within the meaning of Code section 9832(a), Employee Retirement Income Security Act (ERISA) section 733(a) and PHS Act section 2791(a), and is subject to the market reform provisions of the Affordable Care Act applicable to group health plans. Such employer health care arrangements cannot be integrated with individual market policies to satisfy the

market reforms and, therefore, will violate PHS Act sections 2711 and 2713, among other provisions, which can trigger penalties such as excise taxes under section 4980D of the Code. Under the Departments' prior published guidance, the cash arrangement fails to comply with the market reforms because the cash payment cannot be integrated with an individual market policy.

There are severe penalties for violation of the Affordable Care Act provisions. **The IRS has stated that the penalty for violating these Affordable Care Act provisions is \$100 per day/ per participant. Thus, the employer would be subject to a penalty tax of \$36,500 for each employee receiving this payment for individual health insurance.**

The Solution

Any employer payment made during 2014 for the cost of an employee's individual health insurance policy should be included as taxable income on the employee's Form W-2. Such additional income on the Form W-2 will be subject to normal withholding and payroll taxes. Furthermore, the additional taxable income will be included as compensation for other employee benefit purposes.

If the employer wants to continue to assist its employees in 2015, additional taxable compensation can be provided to the employees. The additional compensation cannot be conditioned on whether the employee actually purchases health insurance. Furthermore, the employer should not be making any payments for individual health insurance policies directly to the insurance company on behalf of the employees. The employees should be paying any required premium payments themselves.