Timeline of post-2012 tax changes in health care reform legislation

In March of 2010, Congress passed and the President signed into law legislation that overhauls the U.S. health care system and affects nearly all taxpayers, many employers, and many elements of the health care industry (the Patient Protection and Affordable Care Act, P.L. 111-148, 3/23/2010, and the Health Care and Education Reconciliation Act of 2010, P.L 111-152, 3/30/2010). This massive overhaul contains a host of tax changes, many of which are both complex and novel. To compound the challenge, the tax changes go into effect over an unusually long number of years.

TAX CHANGES TAKING EFFECT IN 2013

Increased HI tax for high-earning workers and self-employed taxpayers. For tax years beginning after 2012, an additional 0.9% hospital insurance (HI) tax applies under Code Sec. 3101(b)(2) to wages received with respect to employment in excess of: $250,000 for joint returns; $125,000 for married taxpayers filing a separate return; and $200,000 in all other cases. Under Code Sec. 1401(b)(2), the additional 0.9% HI tax also applies to self-employment income for the tax year in excess of the above figures. (Code Sec. 6051(a)(14))

Surtax on unearned income of higher-income individuals. For tax years beginning after Dec. 31, 2012, an unearned income Medicare contribution tax is imposed on individuals, estates, and trusts. (Code Sec. 1411) For an individual, the tax is 3.8% of the lesser of either (1) net investment income or (2) the excess of modified adjusted gross income over the threshold amount ($250,000 for a joint return or surviving spouse, $125,000 for a married individual filing a separate return, and $200,000 for all others). For surtax purposes, gross income doesn't include excluded items, such as interest on tax-exempt bonds, veterans' benefits, and excluded gain from the sale of a principal residence.

Higher threshold for deducting medical expenses. For tax years beginning after Dec. 31, 2012, unreimbursed medical expenses will be deductible by taxpayers under age 65 only to the extent they exceed 10% of adjusted gross income (AGI) for the tax year. (Code Sec. 213(a)) If the taxpayer or his or her spouse has reached age 65 before the close of the tax year, a 7.5%

floor applies through 2016 and a 10% floor applies for tax years ending after Dec. 31, 2016. (Code Sec. 213(f))

Dollar cap on contributions to health FSAs. For tax years beginning after Dec. 31, 2012, for a health FSA to be a qualified benefit under a cafeteria plan, the maximum amount available for reimbursement of incurred medical expenses of an employee (and dependents and other eligible beneficiaries) under the health FSA for a plan year (or other 12-month coverage period) can't exceed $2,500. (Code Sec. 125(i)) (Code Sec. 213(f))

Deduction eliminated for retiree drug coverage. Sponsors of qualified retiree prescription drug plans are eligible for subsidy payments from the Secretary of Health and Human Services (HHS) for a portion of each qualified covered retiree's gross covered prescription drug costs ("qualified retiree prescription drug plan subsidy"). These qualified retiree prescription drug plan subsidies are excludable from the taxpayer's (plan sponsor's) gross income for regular income tax and alternative minimum tax (AMT) purposes. For tax years beginning before 2013, a taxpayer may claim a business deduction for covered retiree prescription drug expenses, even though it excludes qualified retiree prescription drug plan subsidies allocable to those expenses. But for tax years beginning after Dec. 31, 2012, under Code Sec. 139A, the amount otherwise allowable as a deduction for retiree prescription drug expenses will be reduced by the amount of the excludable subsidy payments received.

Fee on health plans. For each policy year ending after Sept. 30, 2012, each specified health insurance policy and each applicable self-insured health plan will have to pay a fee equal to the product of $2 ($1 for policy years ending during 2013) multiplied by the average number of lives covered under the policy. The issuer of the health insurance policy or the self-insured health plan sponsor is liable for and must pay the fee. (Code Sec. 4375, Code Sec. 4376, and Code Sec. 4377)

$500,000 compensation deduction limit for health insurance issuers. For tax years beginning after Dec. 31, 2012, for services performed during that year, a covered health insurance provider isn't allowed a compensation deduction for an "applicable individual" (officers, employees, directors, and other workers or service providers such as consultants) in excess of $500,000. (Code Sec. 162(m)(6)(A)) A complex rule may reach compensation attributable to services performed in a tax year beginning after Dec. 31, 2009.

Excise tax on medical device manufacturers. For sales after Dec. 31, 2012, a 2.3% excise tax applies under Code Sec. 4191 to sales of taxable medical devices intended for humans. The excise tax, paid by the manufacturer, producer, or importer of the device, won't apply to eyeglasses, contact lenses, hearing aids, and any other medical device determined by IRS to be of a type that is generally purchased by the general public at retail for individual use.

TAX CHANGES TAKING EFFECT IN 2014

Larger employers not offering affordable health insurance coverage must pay penalty. Under Code Sec. 4980H, for months beginning after Dec. 31, 2013, a large employer (generally, one with at least 50 full-time employees) that (1) doesn't offer health care coverage for all its full-time employees, (2) offers minimum essential coverage that is unaffordable (coverage with a premium required to be paid by the employee that is more than 9.5% of the employee's household income, as defined for purposes of certain premium tax credit rules), or (3) offers minimum essential coverage that consists of a plan under which the plan's share of the total allowed cost of benefits is less than 60%, must pay a penalty if any full-time employee is certified to the employer as having purchased health insurance through a state exchange with respect to which a tax credit or cost-sharing reduction is allowed or paid to the employee.

Individuals not carrying health insurance face a penalty. For tax years beginning after Dec. 31, 2013, nonexempt U.S. citizens and legal residents must pay a penalty if they do not maintain minimum essential coverage, which includes government sponsored programs (e.g., Medicare, Medicaid, Children's Health Insurance Program), eligible employer-sponsored plans, plans in the individual market, certain grandfathered group health plans and other coverage as recognized by HHS in coordination with IRS. (Code Sec. 5000A) There are a number of exceptions, such as one for certain lower-income individuals.

Refundable tax credit for low- or moderate-income families buying certain health insurance. For tax years ending after Dec. 31, 2013, a new refundable tax credit (the "premium assistance credit") under Code Sec. 36B applies to qualifying taxpayers who get health insurance coverage by enrolling in a qualified health plan through a State-established American Health Benefit Exchange.

"Qualified health plans" may be offered through cafeteria plans by "qualified employers." For tax years beginning after Dec. 31, 2013, a reimbursement (or direct payment) for the premiums for coverage under any "qualified health plan" through a health insurance Exchange is a qualified benefit under a cafeteria plan if the employer is a qualified employer (generally, smaller businesses). (Code Sec. 125(f)(3)(B)) In very broad terms, a qualified health plan is one that meets certain certification requirements, provides "an essential health benefits package," and is offered by an insurer meeting detailed requirements. And a health insurance "Exchange" is a federally supervised marketplace for health insurance policies meeting specific eligibility and benefit criteria, to be made available not later than Jan. 1, 2014, to qualifying individuals and employer groups of graduated sizes.

New information reporting of employer-provided health coverage. For periods beginning after Dec. 31, 2013, new information reporting and related statement obligations apply under Code Sec. 6056 for (1) certain applicable large employers required to offer their full-time employees and their dependents the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan and (2) offering employers (those offering minimum essential coverage to employees and paying any portion of the such coverage, but only if the required employer contribution of any employee exceeds 8% of the employee's wages).

Excise tax on health insurance providers. For calendar years beginning after Dec. 31, 2013, an annual fee applies to health insurance providers. The aggregate annual flat fee for the industry (e.g., $8 billion for 2014) will be allocated based on a health provider's market share of net premiums written for a U.S. health risk for calendar years beginning after Dec. 31, 2012. The fee will not apply to companies whose net premiums written are $25 million or less. For purposes of the fee, health insurance does not include: coverage only for a specified disease or illness; hospital indemnity or other fixed indemnity insurance; insurance for long-term care; or any Medicare supplemental health insurance. (Sec. 9010 of 111–148, as amended by Sec. 10905 and Sec. 1406 of P.L. 111–152)

Accelerated estimated tax payments for large corporations. The estimated tax payment due for large corporations (assets of at least $1 billion at the end of the previous tax year) in July, August, or September 2014 is increased from 157.75% to 173.50% of the payment otherwise

due, and the amount of the next required installment is appropriately reduced. (Sec. 1410 of P.L. 111–152)

TAX CHANGE TAKING EFFECT IN 2018

Excise tax applies to high-cost employer-provided health insurance coverage. For tax years beginning after Dec. 31, 2017, a 40% nondeductible excise tax will be levied on insurance companies and plan administrators for employer-sponsored health coverage to the extent that annual premiums exceed $10,200 for single coverage and $27,500 for family coverage. (Code Sec. 4980I) An additional threshold amount of $1,650 for single coverage and $3,450 for family coverage will apply for retired individuals age 55 and older and for plans that cover employees engaged in high risk professions.