What Every Employer Needs To Know About The Tax Reform Law

Insights
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Late last year, Congress passed the Tax Cuts and Jobs Act (the "Act") and it was quickly signed by the President. The Act seeks to reform the current tax system and contains numerous provisions that may be significant to employers:

Health Care Coverage: ACA Individual Mandate

Tax Code prior to the Act	Tax Code after the Act
The Affordable Care Act (ACA) imposed a penalty on individuals who did not have minimum essential coverage in any month. The amount of the penalty may be based on the amount of the individual's household income or how many individuals are in the household.	The penalty will be eliminated beginning in 2019.

Without the individual mandate, it is likely that fewer individuals will purchase health insurance from the Marketplace. Only those who are the sickest will continue to purchase insurance. Since those individuals will incur more claims, the cost of premiums will likely increase.

The Act does not address the employer mandate, meaning it is still in effect and any compliance and reporting efforts should be continued.

Retirement Plans

Recharacterization Of Roth Rollover Contributions

Tax Code prior to the Act	Tax Code after the Act
• Individuals were permitted to recharacterize a traditional IRA contribution into a Roth contribution and vice versa. Upon recharacterization, the individual is treated as if they had initially made the contribution to the new type of account. • If a Roth conversion is recharacterized, the individual is treated as though the conversion never occurred. • Individuals could recharacterize these contributions until their tax return deadline, including extensions. • It was possible to roll over distributions from a qualified retirement plan, 403(b) plan or a 457(b) plan to a Roth IRA. • In-plan Roth rollovers could not be recharacterized.	• It is no longer permissible to recharacterize qualified rollover contributions (including a conversion) from a non-Roth account to a Roth IRA. This would include qualified rollover contributions from pre-tax contributions to an IRA, qualified retirement plan, 403(b) or 457(b). • It is still possible to recharacterize Roth IRA contributions into a traditional IRA, but individuals will not be able to reverse or undo the conversion. • Individuals will also still be permitted to recharacterize traditional IRA contributions to a Roth IRA, provided the individual is permitted to make a Roth IRA contribution for that year. • The changes to recharacterization are in effect for all taxable years after December 31, 2017. It is likely that individuals may still recharacterize amounts contributed in 2017, but it is unclear.

If your retirement plan permits the recharacterization of Roth contributions, you may need to revise your plan accordingly.

Plan Loan Offsets

Tax Code prior to the Act	Tax Code after the Act
Typically, when a plan terminates or a participant who has taken out a loan terminates employment, loans were immediately due and payable. If the loan was not repaid in full, the plan would offset the amount of the loan against the participant's account. The loan offset could be rolled over by making an equivalent contribution to an IRA or another qualified plan, to be done within 60 days of the offset.	Effective for taxable years beginning after December 31, 2017, participants will have until their tax return deadline (including extensions) for the year in which the loan is treated as distributed from the plan to rollover the loan offset. In order to be eligible to rollover these amounts, the loan must be treated as distributed due to a plan termination or termination of employment and the plan must meet the general IRS plan loan requirements.

If your plan permits loans, you may want to review your plan document and loan policy, if any, to see if it needs to be revised to allow for the additional time to rollover loan offsets.

Disaster Relief

Tax Code prior to the Act	Tax Code after the Act
With qualified retirement plans, 403(b) plans, 457(b) plans or IRAs, generally an individual will be taxed on the amounts in the year distributions are made, although amounts may be rolled over tax free to another eligible retirement plan. Amounts may be distributed only under certain circumstances, and are sometimes subject to a distribution penalty. Typically, in-service distributions are not permitted. One such exception was special distribution and loan relief for those impacted by natural disasters such as Hurricanes Katrina, Wilma, Harvey, or Irma. Impacted individuals were able to increase their maximum plan loan amounts and delay loan repayments. Further, if an impacted individual took a distribution to purchase or build a home in the disaster area, the individual would be permitted to repay the distribution to the plan.	The Act permits for "qualified 2016 disaster distributions" which include any retirement plan or IRA distributions taken from January 1, 2016 to December 31, 2017, for individuals whose principal place of residence was in a presidentially declared disaster area during 2016 and who sustained economic loss due to the disaster, regardless of whether these individuals are permitted to take an in-service distribution. These distributions will: • Be exempt from the typical 10 percent early distribution penalty; • Be exempt from mandatory 20 percent tax withholding; • Permit the individual to ratably include the income over the three-year period beginning with the year the distributions would have otherwise been taxable; and • Permit the contribution of the distribution to the plan or IRA within three years. This special treatment will be limited to aggregate distributions in the amount of $100,000. The Act provides for retroactive plan amendments.

If your retirement plan permits for disaster relief or you are preparing retroactive plan amendments, you should review those documents as well as any relevant distributions forms.

Employee Compensation

$1 Million Deduction Limit On Officers' Compensation

Tax Code prior to the Act	Tax Code after the Act
Deductions by publicly traded companies were limited to $1 million in compensation for the CEO and other individuals whose compensation is required to be reported under the Securities Exchange Act. The deduction did not apply to performance-based compensation. Whether someone is in the covered group will be determined at the close of the employer's taxable year.	Beginning in 2018, deductions will be limited to $1 million in compensation for anyone who was CEO or CFO during the taxable year, as well as the three highest-compensated officers other than the CEO or CFO. The limit in deductions will no longer apply only to publicly traded companies and will apply as long as the company is required to file reports under Section 15(d) of the Securities Exchange Act. There are no longer exceptions for performance-based compensation.

There is transitional relief for any compensation paid to covered individuals if the compensation is paid pursuant to a binding contract in effect on November 2, 2017, the terms of which were not materially modified on or after November 2, 2017. Any contracts “renewed” after November 2, 2017 will not qualify. Further, if any contract is terminable or cancelable unconditionally, it is treated as a new contract entered into on the date of the termination or cancellation. Employers may want to keep this in mind when negotiating or renewing contracts for compensation packages of certain officers.

Excise Tax For Compensation Over $1 Million At Tax-Exempt Organizations

Tax Code prior to the Act	Tax Code after the Act
Deductions by publicly traded companies were limited to $1 million in compensation for the CEO and other individuals whose compensation is required to be reported under the Securities Exchange Act. The deduction did not apply to performance-based compensation. Whether someone is in the covered group will be determined at the close of the employer’s taxable year.	Beginning in 2018, deductions will be limited to $1 million in compensation for anyone who was CEO or CFO during the taxable year, as well as the three highest-compensated officers other than the CEO or CFO. The limit in deductions will no longer apply only to publicly traded companies and will apply as long as the company is required to file reports under Section 15(d) of the Securities Exchange Act. There are no longer exceptions for performance-based compensation.

Tax-exempt organizations may want to revisit contracts with certain employees or set aside additional funds in their budgets to cover excise taxes.

Qualified Equity Grants For Non-Public Companies

Tax Code prior to the Act	Tax Code after the Act
Previously, when an employee recognized income in the taxable year, the employee's right to stock was transferable, or when there was no longer a substantial risk of forfeiture, whichever is applicable. Employees may make an 83(b) election that accelerates the taxation of stock prior to vesting. When proper 83(b) elections are made, the amount of taxable income is capped at the fair market value of the stock as of the date of transfer (less any amount paid for the stock). 83(b) elections are not allowed for restricted stock units (RSUs).	If the corporation's stock is not publicly traded, employees who are granted stock options or RSUs for the performance of services may elect to defer recognition of income for up to five years. In order to be considered "qualified stock," the stock must be received due to the exercise of an option or in settlement of an RSU and it must have been granted; (a) due to the performance of services, and; (b) in a year the corporation was an eligible. Qualified stocks will be taxed in the year in which the earliest of the following events occurs: (1) the date the qualified stock is transferrable, (2) the individual becomes an "excluded employee," (3) the date on which any employer stock first becomes publicly traded, (4) five years after the earlier of the first date the stock is transferrable or not subject to a substantial risk of forfeiture, or (5) the date the employee revokes the election. An excluded employee is defined as a one-percent owner within the current or 10 previous calendar years, a current or former CEO or CFO (and certain related persons), and one of the four highest-paid officers within the current or 10 previous calendar years.

There must be a written plan which grants stock options or RSUs and covers at least 80 percent of full-time employees (other than excluded employees) working in the U.S. This requirement cannot be met by granting a combination of stock options and RSUs. Corporations must provide notice of grants to employees, and an excise tax will apply if the notice is not provided. There also will be new wage withholding rules to determine the time and rate of withholding on grants, rules for reporting, and rules for coordinating these grants with rules for incentive stock options, employee stock purchase plans, and deferred compensation (i.e., these grants are not subject to Code § 409A). If non-public employers grant employees stock options or RSUs, they should review the number of employees receiving this form of compensation. Also consider drafting notices for grants to avoid excise taxes. Such employers should also keep up with new withholding rules and oversee any reporting and withholding changes.

Fringe Benefits

Suspension Of Certain Entertainment And Meal Deductions

Tax Code prior to the Act	Tax Code after the Act
Employers were permitted deductions for entertainment, amusement, or recreation expenses if they could establish that the expense was directly related to the taxpayer's trade or business. Deductions for entertainment expenses were typically limited to 50 percent. Employers were also permitted to deduct expenses for meals, food, and beverages, provided that it was an ordinary and necessary business expense. This could include meals provided to employees on the employer's business premise. Similarly, meals could be excluded from an employee's income as a *de minimis* fringe benefit or where the meal was provided for the employer's convenience on the business premises.	The Act prohibits deductions for entertainment, amusement, or recreation expenses, and meals, food, or beverages, even if taxpayers can establish it was directly related to their trade or business, unless a pre-Act statutory exemption applies. Beginning in 2018, there will be a 50 percent limit imposed on deductions for food and beverages that may be excluded from an employee's income as *de minimis*. Beginning 2026, no deductions will be permitted for meals provided for the employer's convenience on the business premises.

Employers who provide meals to employees may want to revisit whether employees value these perks since the employer will no longer be able to take a deduction for the full amount of meal, food, and beverage costs.

Suspension Of Transportation Deductions

Tax Code prior to the Act	Tax Code after the Act
Employers were permitted to deduct qualified transportation fringe benefits provided to employees even if the benefits were excluded from the employee's income. Qualified transportation fringe benefits include parking, transportation passes, and qualified bicycle commuting reimbursements.	Effective 2018, employers will not be able to deduct qualified transportation fringe benefits except qualified bicycle commuting reimbursements. There may be an exception if transportation expenses are necessary to ensure employee safety. Employees will still be able to exclude amounts for qualified transportation fringe benefits unless it is a qualified bicycle commuting reimbursement.

From 2018 to 2026, amounts for qualified bicycle commuting reimbursements are no longer excluded from employees' income, but employers will still be able to deduct those amounts. Employers providing qualified transportation fringe benefits need to consider the added cost of continuing to provide these benefits. If an employer is unsure whether to begin providing these benefits, they should factor into the decision the inability to take deductions on these amounts.

Fringe Benefits And Tax-Exempt Entities

Tax Code prior to the Act	Tax Code after the Act
Those tax-exempt entities that provided qualified transportation fringe benefits to employees did not need to deduct the amount of the benefits, but the employees still could exclude the amount of the benefits from their income.	Unrelated business taxable income for tax-exempt employers will be increased by the amount a deduction is disallowed under Section 247 of qualified transportation fringe benefits, qualified parking, or any on-premise athletic facility.

Even though the amount of these benefits will be free of tax consequences for employees, tax-exempt entities should be aware of the additional unrelated business taxable income they will now have to report.

Employee Achievement Awards

Tax Code prior to the Act	Tax Code after the Act
An "employee achievement award" is tangible personal property given to an employee in recognition for their length of service achievement or safety achievement, and which does not appear to be disguised compensation. Provided that certain requirements are met, employer-provided achievement awards were excluded from an employee's income. The employer was also able to take a deduction for these amounts, but it was limited.	The employee achievement award exclusion/deduction will no longer include cash, gift certificates, vacations, meals, tickets to events, or "other similar items." The exclusion/deduction will still apply to achievement awards for other tangible property.

There will no longer be an exception for many types of employee achievement awards, so employers should be aware of the potential tax consequences to the employees before providing achievement awards. For example, if the employer has a practice of giving employees gift cards on their employment anniversaries, employees will have to include the value of those gift cards in their taxable income.

Tax Code prior to the Act	Tax Code after the Act
Employees who received qualified moving expense reimbursement from their employer could exclude those amounts from income. In order to qualify, the qualified moving expense reimbursement had to be for reasonable expenses to move from a former residence to a new residence and for travel incurred during the move, excluding meals. If an individual was not reimbursed for moving expenses, subject to limitations, the individual could make an above-the-line deduction for moving expenses incurred because of change in employment.	Qualified moving expense reimbursements may no longer be excluded from income from 2018 to 2026, except for members of the Armed Forces on active duty. Similarly, individuals may not take a deduction for moving expenses from 2018 to 2026, except for members of the Armed Forces on active duty.

Though employers may still offer moving expense reimbursements to employees, those amounts will need to be included in employees' incomes. Prior to the Act, moving expenses that were not accounted for were considered taxable income to employees. Now, even moving expenses that are accounted for will be considered taxable income, so employers may want to consider giving employees lump-sum moving stipends regardless of how much they actually spend moving, rather than employees submitting for reimbursement, in the interest of ease of administration and because employees will be taxed on the amounts anyway.

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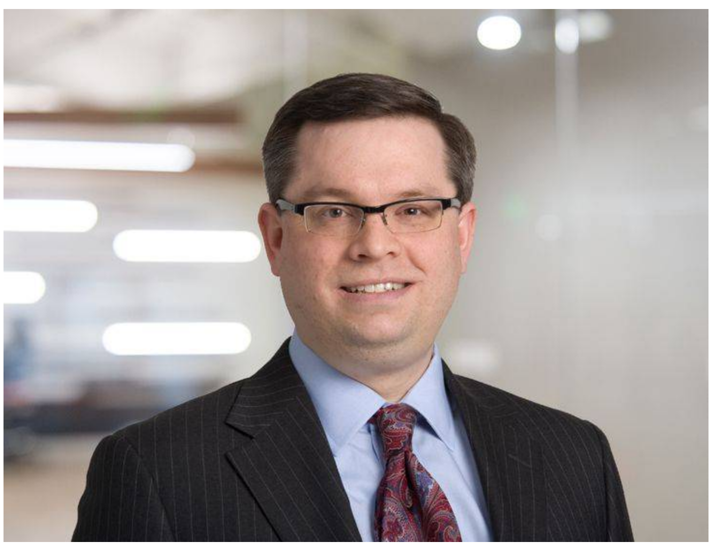

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