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Department of the Treasury/Internal Revenue Service “Hot Topics” Panel  
Summary of Selected Guidance Issued by the Department of the Treasury and the Internal Revenue Service during the Past 12 Months

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Proposed Regulations - Health Reimbursement Arrangements and Other Account-Based Group Health Plans  
(October 28, 2018)

These proposed regulations would permit employers to offer health reimbursement arrangements ("HRAs") to employees who are enrolled in individual health insurance coverage, which employees could then use to pay the premiums for such individual health insurance coverage. These proposed regulations provide that the same HRA must be offered to an entire “class” of employees and that a traditional group health plan could not be offered to that class. Classes of employees include full-time, part-time, seasonal, union, employees in a waiting period, employees under age 25, non-resident aliens with no U.S. income, employees in the same insurance rating area, or a combination of those classes. These proposed regulations provide that the employer HRA contribution rate could increase based on a participant’s age and that the IRS will provide an approach in the future so that such varying contribution rates would be permissible under the Code Section 105(h) nondiscrimination rules. These proposed regulations also provide that (i) future guidance will be issued describing a “safe harbor” HRA that is integrated with individual health coverage and that could satisfy minimum value and affordability requirements to avoid applicable large employer penalties under the Affordable Care Act and (ii) individual insurance policies purchased using HRAs would not themselves become part of an ERISA plan.

Notice 2018-83 - Qualified Retirement Plan Limit Increases for 2018  
(November 1, 2018)

In this notice, the IRS announced cost of living increases that apply to qualified retirement plans in the 2019 calendar year. A list of some of those limits for 2019 is below:

- Compensation limit used in calculating a participant’s benefit accruals: increased to $280,000.
- Elective deferrals to 401(k) and 403(b) plans: increased to $19,000.
- Annual additions to a defined contribution plan: increased to $56,000.
- Catch-up contributions for employees aged 50 and over to 401(k) and 403(b) plans: remains unchanged at $6,000.
- Annual benefit limit for a defined benefit plan: increased to $225,000.
- Compensation dollar limit for defining a “key employee” in a top heavy plan: increased to $180,000.
- Compensation dollar limit for defining a “highly compensated employee”: increased to $125,000.

**Notice 2018-85 – PCORI Fee Dollar Amount Basis Increase**
(November 5, 2018)

In this notice, the IRS increased the dollar amount that is the basis of the fee established under the Affordable Care Act to help fund the Patient-Centered Outcomes Research Institute (“PCORI Fee”). This Notice increases that dollar amount for plan and policy years that end on or after October 1, 2018, and before October 1, 2019, from $2.39 to $2.45.

**Final Regulations – Religious and Moral Exemptions and Accommodations for Coverage of Certain Preventive Services under the Affordable Care Act**
(November 8, 2018)

These final regulations expand the religious exemption to the Affordable Care Act’s contraceptive coverage mandate to apply to all types of non-governmental employers, including for-profit corporations (regardless of their size or whether they are publicly or privately held). In addition, these final regulations provide that the moral exemption to the Affordable Care Act’s contraceptive coverage mandate applies to certain non-governmental employers, including privately held for-profit employers, insurers, and individuals. These final regulations maintain the availability of a voluntary accommodation whereby the objecting entity’s insurer or third party administrator would be responsible for providing contraceptive services to the objecting entity’s plan participants. These final regulations are effective as of January 14, 2019.

**Proposed Regulations – Hardship Distributions of Elective Contributions, QNECs, QMACs, and Earnings**
(November 9, 2018)

These proposed regulations would address changes enacted by the Tax Cuts and Jobs Act (“2017 Tax Act”), the 2018 Budget, and other prior changes to the Code. Specifically, these proposed regulations (i) permit, but do not require, hardship distributions from a participant’s elective contributions, QNECs, QMACs (including safe harbor matching contributions), and any earnings on those amounts, regardless of when they were contributed or earned; (ii) eliminate the requirement that a participant take out all available plan loans before receiving a hardship distribution; and (iii) prohibit plans from containing a requirement that a participant may not contribute to the plan for any period of time following a hardship distribution. In addition, the proposed regulations would modify the safe harbor list of expenses for which a hardship distribution may be taken to include (x) the “primary beneficiary under the plan” as an individual for whom qualifying medical, educational, or funeral expenses may be incurred and (y) expenses incurred because of a federally declared disaster. The changes to the hardship distribution rules are effective as of the first plan year on or after January 1, 2019.

**Notice 2018-91 – 2018 Required Amendments List**
(November 21, 2018)

This notice includes the Required Amendments List for 2018, which lists statutory and administrative changes in plan qualification requirements that (i) are first effective in the plan year in which the list is published and (ii) may require a plan amendment. This year’s list did not include any such items.
Notice 2018-94 – Extension of Deadline to Furnish Forms 1094/1095 and Good Faith Transition Relief
(November 29, 2018)

In this notice, the IRS extended the due date for furnishing individuals with their 2018 Form 1095-B and Form 1095-C from January 31, 2019, to March 4, 2019. This notice did not extend the due dates applicable to filing Forms 1094-B, 1095-B, 1094-C, and 1095-C with the IRS. In this notice the IRS also extended its good-faith transition relief from penalties that could apply for incorrect or incomplete information reported on such forms furnished to individuals or filed with the IRS. That relief does not apply if the applicable forms were not timely filed or furnished by their respective due dates.

Notice 2018-97 – Guidance on Deferral of Income Under IRC Section 83(i)
(December 7, 2018)

In this notice, the IRS provides guidance under the new Code Section 83(i), which allows certain employees of privately-held corporations to defer the recognition of income (for up to five years) attributable to the vesting or receipt of certain qualified company stock transferred pursuant to the exercise of stock options or the settlement of restricted stock units. Specifically, this notice provides initial guidance on (i) the application of the requirement in Code Section 83(i)(2)(C)(i)(II) that equity grants be made to at least 80% of all employees who provide services to the corporation in the United States, (ii) the application of tax withholdings on the deferred income related to the qualified company stock, and (iii) the ability of an employer to opt out of permitting employees to elect the deferred tax treatment even if the requirements under Code Section 83(i) are otherwise met.

Notice 2018-99 – Guidance on Parking Expenses for Qualified Transportation Fringes under Code Sections 274(a)(4) and 512(a)(7)
(December 10, 2018)

In this notice, the IRS provides changes to Code Section 274 made by the 2017 Tax Act for compensation earned after December 31, 2017, which (i) disallows a deduction for expenses with respect to qualified transportation fringes (“QTFs”) provided to employees by their for-profit employers and (ii) increases the amount of unrelated business taxable income (“UBTI”) attributable to nondeductible parking expenses. This notice also provides interim guidance on permissible methods for determining the amount of parking expenses for QTFs that is nondeductible, which depends on whether the employer pays a third party to provide employee parking or whether the employer owns or leases the employee parking facility, and the increased UBTI amount. Employers that pay third parties to provide employee parking, the disallowance is generally the employer’s total annual cost of such parking, less any amount of such costs that exceed the limit on tax-free employee compensation attributable to a QTF under Section 132 of the Code (which, for 2018, is $260 per employee). For employers that own or lease the employee parking facilities, the disallowance may be calculated using any reasonable method, and this notice provides a safe harbor method for calculating the disallowance. Taxpayers may rely on the transitional guidance provided in this notice until further guidance is issued.

Information Letter 2018-0033 – Health Savings Accounts
(December 28, 2018)

In this information letter, the IRS clarifies that the circumstances in which an employer may recoup contributed amounts from a health savings account (“HSA”) trustee discussed in Notice 2008-59 were not intended to be exclusive. Specifically, if there is clear documentary evidence demonstrating an administrative or process error on the part of the employer or the HSA trustee, an employer may request
that the HSA trustee return such amounts to the employer, with any correction needed to put the parties in the same position they would have been in had the error not occurred.

**Notice 2019-18 – Guidance on Offering Lump-Sum Payment Option to Retirees Receiving Annuity Payments under a Defined Benefit Plan**  
(March 6, 2019)

In this notice, the IRS retracted its prior guidance issued in Notice 2015-49 (which announced the IRS’s intent to amend the Treasury Regulations under Code Section 401(a)(9) to expressly prohibit defined benefit plans from offering lump-sum window programs to retirees in pay status) and further stated that until further guidance is issued, the IRS will not assert that a plan amendment providing for such a lump-sum window program causes the plan to violate Code Section 401(a)(9). However, during this period, the IRS will also not issue private letter rulings with regard to retiree lump-sum window programs.

**2019 Operational Compliance Checklist**  
(March 26, 2019)

This checklist, which is only available online, lists changes in qualification requirements that became effective during the 2016 through 2019 calendar years. Examples of items added to the checklist for the 2019 calendar year include, among other things:

- changes to the hardship distribution rules enacted by the Bipartisan Budget Act of 2018, such as eliminating the requirement to first take out all available plan loans and expanding the types of contributions eligible for distribution;
- proposed regulations enacting certain other changes to the hardship distribution rules, such as eliminating the six-month contribution suspension requirement and expanding the safe harbor list of expenses deemed to constitute an immediate and heavy financial need;
- the extension of temporary nondiscrimination relief for closed defined benefit plans.

The checklist does not include routine, periodic changes, such as cost-of-living increases, spot segment rates, and applicable mortality tables.

(April 19, 2019)

In this revenue procedure, the IRS published its most current consolidated statement of the correction programs under its Employee Plans Compliance Resolution System (“EPCRS”). Pursuant to this new guidance, eligible plan sponsors may use the self-correction program (“SCP”) component of EPCRS to correct certain plan document and participant loan failures (including defaulted plan loans). This revenue procedure also expands the circumstances under which certain operational failures may be corrected by plan amendment under SCP.

(May 13, 2019)

In this revenue procedure, the IRS extended the determination letter program, effective as of September 1, 2019, to include merged plans resulting from a corporate merger or similar transaction as well as individually designed statutory hybrid plans during a 12-month window beginning on September 1, 2019. For a merged plan to be eligible for a favorable determination letter, (i) the date of the plan merger must occur no later than the last day of the first plan year beginning after the plan year that includes the closing date of the corporate transaction, and (ii) the determination letter application must be submitted between
the date of the plan merger and the last day of the first plan year beginning after the date of the plan merger.

(May 28, 2019)

In this revenue procedure, the IRS announced the 2020 calendar year limits on (i) annual contributions that can be made to a health savings account and (ii) annual deductibles and out-of-pocket maximums under a high deductible health plan (“**HDHP**”). The 2020 limits are as follows:

- Annual HSA contribution limits increased to $3,550 for self-only coverage and $7,100 for family coverage.
- Minimum HDHP deductible increased to $1,400 for self-only coverage and $2,800 for family coverage.
- HDHP out-of-pocket maximum limit increased to $6,900 for self-only coverage and $13,800 for family coverage.

**Final Regulations – Health Reimbursement Arrangements and Other Account-Based Group Health Plans**
(June 20, 2019)

These final regulations create two new options for providing employer-sponsored group health coverage under a health reimbursement arrangement (“**HRA**”) to include an (i) “Individual Coverage HRA” and (ii) “Excepted Benefit HRA”. An Individual Coverage HRA may be offered by employers as an alternative to coverage under a traditional group health plan (“**Traditional GHP**”), subject to certain conditions described in the regulations. An Excepted Benefit HRA may be offered by an employer in addition to a Traditional GHP, even if the employee declines enrollment in the Traditional GHP. If an HRA meets the requirements of an Excepted Benefit HRA, it will be exempt from certain federal health care requirements, such as those under the Affordable Care Act. In order to qualify as an Excepted Benefit HRA, the HRA must meet specific conditions described in the regulations.

**Notice 2019-45 – Additional Preventive Care Benefits Permitted under HDHPs Under Code Section 223**
(July 17, 2019)

In this notice, the IRS expanded the scope of preventive care services that can be provided under an HDHP, with corresponding expense reimbursements from an HSA without first meeting the HDHP annual deductible to include services for certain chronic conditions such as diabetes, asthma, and heart disease. The IRS expects to periodically reevaluate this list of eligible health care services for chronic conditions to determine whether certain services should be added or removed.

**Rev. Proc. 2019-29 – 2020 Adjustments to Affordable Care Act Employer Affordability Percentage**
(July 22, 2019)

In this revenue procedure, the IRS announced that the “affordability percentage” for 2020 under the Affordable Care Act would decrease to 9.78% from 9.86% in 2019. Generally, the Affordable Care Act requires group health plan coverage sponsored by large employers to be “affordable” in order to avoid certain penalties. Affordability is based on whether the premium for employee-only coverage is less than a certain percentage of an employee’s household income or an applicable safe harbor amount.

*[Updated through September 8, 2019]*