

What's new for 2014

There are many important tax changes taking effect in 2014. They are the result of tax legislation enacted in prior years, or are triggered by effective dates in regs, rulings and other guidance. Also, a number of important final regs go into effect in 2014. This article highlights key non-inflation-indexed tax changes affecting businesses and individuals.

Observation: Numerous other tax changes will go into effect by default, as a long list of business and individual tax breaks (the so-called "extender provisions") expired at the end of 2013. However, a number of these extenders may very well be retroactively revived early in 2014.

Capitalization rules in final regs go into effect. In general, the final capitalization regs published in September of this year apply to tax years beginning on or after Jan. 1, 2014, but a number of special rules in the regs, such as the de minimis safe harbor election of Reg. § 1.263(a)-1(f), apply to amounts paid in tax years beginning on or after Jan. 1, 2014. Also note that complex transitional rules apply to earlier years at the taxpayer's election.

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. There are a number of exceptions, such as one for certain lower-income individuals. Also, individuals who received a notice saying that their current health insurance plan is being cancelled also may qualify for an exemption.

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 an 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). 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.

Observation: Related Affordable Care Act (ACA) rules requiring mandatory employer and insurer reporting under Code Sec. 6055 and Code Sec. 6056 and employer shared responsibility payments under Code Sec. 4980H, were to have gone into effect on Jan. 1, 2014, but IRS postponed these rules until Jan. 1, 2015.

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.

Reduced total assets threshold for Schedule UTP. In general, certain corporations meeting a total assets threshold must report on Schedule UTP (Uncertain Tax Positions Statement) each federal income tax position taken by the corporation on its federal income tax return for the current tax year or an earlier tax year, if either: (a) the corporation or a related party has recorded a reserve with regard to that tax position for U.S. federal income tax in audited financial statements; or (b) the corporation or related party did not record a reserve for the tax position because the corporation expects to litigate the position.

The total asset threshold for filing Schedule UTP falls to \$10 million starting with 2014 tax years (it had been \$50 million starting with 2012 tax years and \$100 million beginning with 2012 tax years).

Lower standard mileage allowance rate. The optional mileage allowance for owned or leased autos (including vans, pickups or panel trucks) will decrease by 0.5¢ to 56¢ per mile for business travel after 2013. This rate can also be used by employers to reimburse tax-free under an accountable plan employees who supply their own autos for business use, and to value personal use of certain low-cost employer-provided vehicles. The rate for using a car to get medical care or in connection with a move that qualifies for the moving expense will also decrease by 0.5¢ to 23.5¢ per mile.

FATCA implementation. Chapter 4 of the Code (Code Sec. 1471 through Code Sec. 1474) requires withholding agents to withhold 30% of certain payments to a foreign financial institution (FFI) unless the FFI has entered into an agreement with IRS to, among other things, report certain information with respect to U.S. accounts. Chapter 4 also imposes withholding, documentation, and reporting requirements on withholding agents, with respect to certain payments made to certain non-financial foreign entities. The statutory provisions are generally effective for payments made after Dec. 31, 2012, but their implementation has been delayed and phased in over several years. In January of 2013, IRS issued final FATCA regs that, among other things, provided for a phased implementation of the FATCA requirements over the 2014 through 2017 period. (T.D. 9610).

Also beginning Jan. 1, 2014, U.S. and foreign financial institutions (but not other payors) that are required to report payments made under FATCA must electronically file Forms 1042-S

(Foreign Person's U.S. Source Income Subject to Withholding), regardless of the number of 1042-S forms they are required to file.

Final regs clarifying 3.8% surtax on investment income & gains go into effect. For tax years beginning after Dec. 31, 2012, certain unearned income of individuals, trusts, and estates is subject to a surtax (i.e., it's payable on top of any other tax payable on that income). The surtax, also called the "unearned income Medicare contribution tax" or the "net investment income tax" (NIIT), is 3.8% of the lesser of (1) "net investment income" (NII) or (2) the excess of modified adjusted gross income (MAGI) over the unindexed threshold amount (\$250,000 for joint filers or surviving spouses, \$125,000 for a married individual filing a separate return, and \$200,000 in any other case). In November of 2013, IRS issued final regs that provide guidance on the 3.8% surtax (T.D. 9644). The final regs are generally effective for tax years beginning after Dec. 31, 2013, but taxpayers may apply many of the provisions of the final regs to tax years beginning after Dec. 31, 2012.

Final regs go into effect allowing agents to handle FUTA for home care service employers. In December of 2013, IRS issued final regs (T.D. 9649) that allow a home care service recipient to designate an agent under Code Sec. 3504, to report, file, and pay all employment taxes, including those due under the Federal Unemployment Tax Act (FUTA). The regs also allow an intermediary to file a single FUTA return on behalf of multiple home care service recipients. The regs apply to wages paid on or after Jan. 1, 2014, but can be relied on for all tax years for which a valid designation is in effect.

Beginning of phased broker reporting of debt instruments & options. In April of 2013, IRS issued final regs (T.D. 9616) on the reporting of debt instruments and options by brokers and others under Code Sec. 6045(g), Code Sec. 6045(h), Code Sec. 6045A, and Code Sec. 6045B. Recognizing that the proper implementation of broker basis reporting for debt instruments will require time to build and implement reporting systems, especially for debt instruments with more complex features, the regs implement basis reporting for debt instruments in phases to promote an orderly transition to the new rules. The first phase begins in 2014. For example, in general, the regs regarding reporting of basis and whether any gain or loss on a sale is long-term or short-term under Code Sec. 6045(g) apply to certain debt instruments acquired on or after Jan. 1, 2014; the regs regarding reporting of gross proceeds, basis, and whether gain or loss on a sale is long-term or short-term under section Code Sec. 6045(h) apply to options granted or acquired on or after Jan. 1, 2014. And the regs regarding reporting for issuer actions that affect the basis of certain debt instruments, options, and securities futures contracts apply to issuer actions occurring on or after Jan. 1, 2014.

Revised rules for tips and service charges go into effect. In 2012, IRS issued updated guidance in Rev Rul 2012-18, 2012-26 IRB 1032, on how employers differentiate between tips which are subject to special FICA tax rules, and service charges (mandatory add-ons to food and drink bills

that are distributed by the employer to wait staff), which must be treated as wages and not as tips. Although the guidance generally was effective immediately and applicable retroactively, it was to have applied prospectively by auditors, i.e., only to amounts paid on or after Jan. 1, 2013, if certain conditions were satisfied. In Ann. 2012-50, 2012-52 IRB, IRS announced that it was extending to on or after Jan. 1, 2014 the time for businesses to comply with the proper treatment of service charges that was specified in Rev Rul 2012-18.

Increased fees apply. Under final regs issued in December of 2013 (T.D. 9647), the fee for entering into a regular installment agreement on or after Jan. 1, 2014, is increased from \$105 to \$120. Also effective Jan. 1, 2014, the fee for processing an offer in compromise (OIC) increases from \$150 to \$186 (for the grace period for processing OICs submitted with less than the required amount. However, low-income taxpayers and taxpayers making offers based solely on doubt as to liability will continue to pay no fee.