APRIL 1, 2013

Insurer Compensation Regulations Released

Self-Insured Plans are Exempt; Captives are Not Exempt [Updated for Official Proposed Regulations]

This morning Treasury and IRS released proposed regulations under Code Section 162(m)(6). Generally, for taxable years beginning after December 31, 2012, Code Section 162(m)(6) limits to $500,000 the allowable deduction attributable to services performed by an applicable individual for a covered health insurance provider.

Employers and plan sponsors were eagerly anticipating these proposed regulations to see how they would apply to self-insured plans and to captive insurance arrangements.

With respect to self-insured plans, Treasury and the IRS agreed that an employer who sponsors a self-insured medical reimbursement plan should not be treated as a covered health insurance provider because benefits under this type of plan should not be treated as health insurance coverage for purposes of Code Section 162(m)(6).

With respect to captive insurance arrangements, Treasury and IRS provided that a captive insurance company is treated as a covered health insurance provider under the proposed regulations, if it is a health insurance issuer that is otherwise described in Code Section 162(m)(6). In addition, Treasury and the IRS stated in the preamble that is possible that a proposed 2-percent de minimis exception could apply in the captive situation, if the conditions of the de minimis exception were otherwise satisfied. Employers who utilize captives for health coverage will need to determine how the proposed regulations will apply to the employer's captive and the other subsidiaries and affiliates in its controlled group. It may also be possible to fall within the 2-percent de minimis exception.

Link to Official Proposed Regulations