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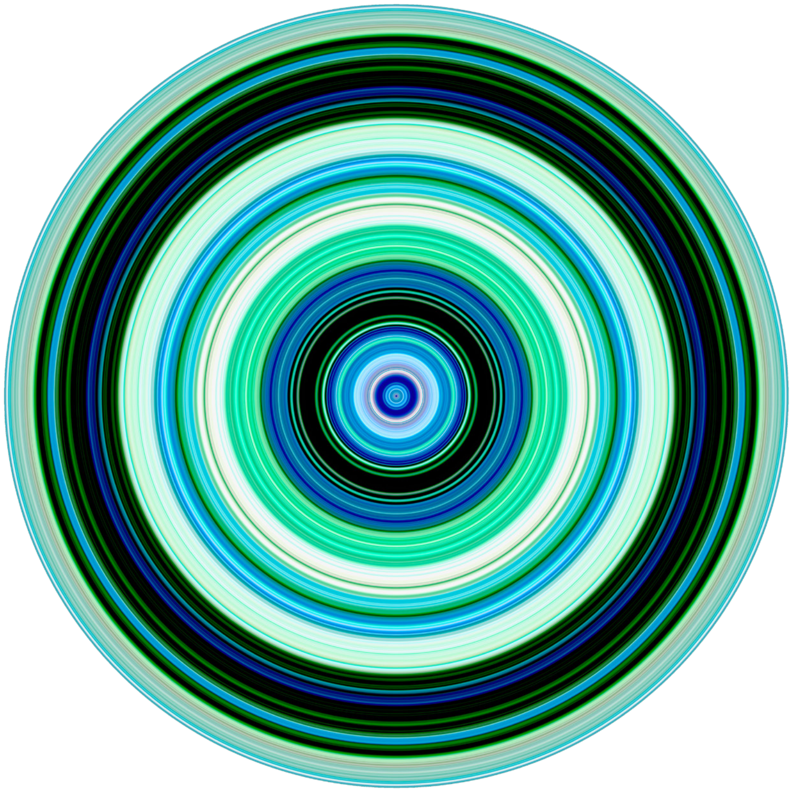

# Tax News and Views
# Health Care Edition

### Supreme Court rules church-affiliated hospital pension plans are exempt from ERISA Requirements

On March 27, 2017, the Supreme Court heard arguments in three cases of whether church-affiliated hospital systems' pension plans are exempt from the requirements of the Employee Retirement Income Security Act ("ERISA"). ERISA requires pension plans to be fully funded and insured but also provides an exemption for pension plans of churches and other religious organizations ("church plans").

The three hospitals in the cases contended that their plans are exempt and have been treated as such by government agencies for over thirty years. The workers suing the hospitals argued that the exemption to ERISA requirements was never meant to exempt church-affiliated plans, that the hospital plans have no relation with the church, and that the hospitals are jeopardizing workers' retirement benefits.

In each case, the Courts of Appeals ruled against the hospitals.

## Find it Fast

On June 5, 2017 in an 8–0 decision with Justice Gorsuch not participating, the Supreme Court held that hospital systems' can be "principal-purpose organizations" under the provisions of ERISA. The court opinion further stated that a pension plan maintained by a principal-purpose organization qualifies as a church plan regardless of who established it. Therefore, the Supreme Court reversed the findings of the Courts of Appeals and held that the hospital systems' pension plans can qualify for exemption from the requirements of ERISA.

The full text of the supreme court ruling can be found here.

### IRS advisory committee on tax-exempt and government entities releases its annual report

The Internal Revenue Service ("IRS") Advisory Committee on Tax Exempt and Governmental Entities ("ACT") released its annual report on June 7, 2017. The ACT is a group of external stakeholders who advise the IRS on operational policy, programs and procedural improvements in each of the tax exempt and governmental entities ("TE/GE") five functional areas: employee plans, tax-exempt organizations, tax-exempt bonds, and federal, state, local, and Indian Tribal governments. The ACT also enables the IRS to receive regular input on the development and implementation of IRS policy concerning these communities. This year, the ACT's 2017 Report of Recommendations focused on the following topics:

- **FICA Replacement Plans Subgroup:** Recommendations Regarding FICA Replacement Plan Requirements
- **Future of the ACT Subgroup:** Recommendations Regarding Changes Made to the ACT
- **Online Accounts Subgroup:** Recommendations Regarding Expansion of Online Accounts for Tax Exempt Entities

The FICA Replacement Plans Subgroup focused on practical ways to improve the carrying out of the requirement that made Social Security mandatory for state and local government employees who are not already voluntarily covered under an agreement entered into under Section 218 of the Social Security Act or who were not qualifying participants in a retirement system. In establishing its recommendations, the FICA Replacement Plans Subgroup surveyed current federal, state, and local government ("FSLG") agents tasked with auditing these rules. The survey was aimed at determining whether these agents thought that current guidance was sufficient and, if not, what if any issues should be addressed.

The recommendations of the FICA Replacement Plan Subgroup are:

1. Consider eliminating the confusion between the 401(a) and ERISA rules by using the term "FICA Replacement Plan" instead of "qualifying" in all publications and guidance related to this topic.
2. Seek guidance from Treasury Counsel on revisions to Revenue Procedure 91-40 to include updated guidance on how cash balance and combination or hybrid plans can meet the requirements for a FICA replacement plan and set thresholds or safe harbors for these plan types.
3. Consider whether FSLG agents need more or better training on the tools and resources available regarding the Social Security coverage laws.
4. Consider training for FSLG agents that includes clear information that their mission is *proper* administration of required Social Security coverage. This includes enforcement when payments have been made without having legal coverage agreements, and assisting state and local entities in understanding the availability of the refund process when Social Security or Medicare taxes have been paid in error.
5. Strengthen training for FSLG agents to encourage agents to refer entities to their applicable State Social Security Administrator for questions on Section 218 Agreements in all applicable situations.
6. Develop an education tool for entities and third-party plan administrators (such as brokers and prototype plan providers) to help their state and local clients understand the coverage impact to Social Security coverage and benefits before adopting a plan that may not provide the desired coverage.
7. Partner with audit standard setting bodies such as the American Institute of Certified Public Accountants and the US Government Accountability Office for the Generally Accepted Government Auditing Standards to include Section 218 coverage and FICA replacement plan requirements in their financial statement auditing scope for state and local entities.
8. Clearly assign and communicate which group—Employee Plans or FSLG—owns the determination responsibility of whether a plan meets the requirements of a FICA replacement plan and related Social Security coverage rules and the enforcement of those rules, which reaches into nearly every aspect of employment tax for governmental entities.

The Future of the ACT Subgroup addressed the effect of the changes to the ACT's charter that reduced the number of members of the ACT and shifted the focus of the ACT to tax administration issues encountered by all tax-exempt and government entities rather than issues specific to each of the five functional areas. The Future of the ACT Subgroup surveyed interested persons regarding the impact of the changes to the ACT regarding the future of the ACT.

The recommendations of the Future of the ACT Subgroup are:

1. Maintain the five TE/GE functional area subcommittee structure for discussion of specific topics that arise during the course of the year so as to communicate concerns from each of those sectors allowing the ACT members' expertise to be fully utilized.
2. Provide confirmation that there will be continued regular periodic interaction of the representatives of the five TE/GE functional areas with the directors of each such TE/GE area.
3. Provide some formal mechanism pursuant to which representatives of the five TE/GE functional areas can interact with attorneys at the IRS Office of Chief Counsel who work in each such area, so the substantive subject matter expertise of the ACT's members is better utilized, while still recognizing that the ACT's members cannot advocate for specific positions as involvement in developing regulatory guidance is no longer an ACT function.
4. Ensure that TE/GE staff informs ACT members when an issue that might be appropriate for a group project arises so that the ACT members are able to consult with staff in the formulation of the corresponding administrative, operational or enforcement guidance; for example, the EP representatives on the ACT could work with TE/GE EP staff on a project like the recently issued hardship distribution documentation guidance.
5. Restore one or more in-person ACT meetings and integrate online meetings and/or web conferencing or some other interactive system for any remaining virtual meetings.
6. Consider reinstating a number of member positions back to the ACT in lieu of further reductions in size as the shrinkage doesn't seem to represent any cost savings where almost all meetings are conducted on a virtual basis.
7. Engage the ACT's subject matter experts in the IRS industry issue resolution program to take advantage of their breadth of knowledge.

The Online Accounts Subgroup addressed how the Internal Revenue Service can develop and implement web-based online accounts to address the needs of Tax Exempt and Government Entities. In developing its recommendations, ACT members met with supervisory program analysts with the IRS Online Services Team and gathered input from ACT members who were not formally part of the Subgroup.

The recommendations of the Online Accounts Subgroup are:

1. Expand online accounts for TE/GE entities. Detailed suggestions of organization specific information and educational items are included for all five of the TE/GE Groups.
2. Expand electronic payment options to allow TE/GE Groups to pay fees and taxes online.
3. Develop special protocols for TE/GE entity representatives to be authenticated and have access to select documents.
4. Continue to provide traditional methods of communication to serve TE/GE entities that do not have online access.

A full copy of the annual report is available on the IRS website.

**Did you know?**

**CMS Issues Resource Guide for Physicians participating in MACRA**

The Centers for Medicare and Medicaid Services issued a Technical Assistance Resource Guide ("Resource Guide") for physician practices participating in the Quality Payment Program, in either the Merit-based Incentive Payment System or the Advanced Alternative Payment Model. The Resource Guide provides information to physician practices about organizations that are available to give hands-on training and support to practices of clinicians based on the size of the practice.

**New IRS Exempt Organizations Division Director**

Margaret Von Lienen has been named the Director of Exempt Organizations in the IRS Tax-Exempt and Government Entities Division. Ms. Von Lienen has been serving as the Acting Director of Exempt Organizations since November 2016 when Tamera Ripperda left the position.

## Deloitte Dbriefs

Deloitte Dbriefs are live webcasts that give you valuable insights on important developments affecting your business. Register for the following webcasts or view archived recordings by clicking on the respective hyperlinked button below.

**Global Mobility, Talent, & Rewards**

### Rise of the employment tax function: Changing expectations and how companies are responding

*July 6 | 2 p.m. ET | 18:00 GMT*

Increasingly, tax authorities worldwide expect faster, more accurate, and transparent employment tax and payroll compliance. How are leading multinationals responding? Learn about emerging trends in global employment tax compliance and practical steps for addressing them.

Register

**Transfer Pricing**

### BEPS contract review: Why it matters

*July 12 | 2 p.m. ET | 18:00 GMT*

The OECD's BEPS Actions 8-10, covering Transfer Pricing Guidelines, recommend granular functional and risk analysis to determine whether a controlled transaction has economic substance. Why is a review of intercompany transaction contracts the starting point? Learn more about this vital and highly complex area of transfer pricing tax compliance.

Register

**Tax Reform**

### US tax reform: What is in store for businesses and individual taxpayers?

*July 18 | 2 p.m. ET | 18:00 GMT*

Congressional efforts to enact tax reform include potential changes to the tax code that are quite broad. How can you learn about key tax legislative and regulatory developments that could significantly impact your company's business models? Stay ahead of what would be the first meaningful tax reform in three decades while learning about emerging requirements that could impact your business and practical steps you can take in response.

Register

**Tax Operations**

### ERP systems and operational transfer pricing: Relief is on the way

*July 20 | 2 p.m. ET | 18:00 GMT*

As multinational companies face increasing transfer pricing challenges, ERP vendors have taken note. What are recent developments from two leading ERP vendors? Learn how ERP vendors are helping multinationals address the challenges of their global transfer pricing operations.

Register

**Multistate Tax**

### Indirect tax and the Internet of Things: Where could convergence impact your organization?

*August 1 | 2 p.m. ET | 18:00 GMT*

The Internet of Things (IoT) has captured the limelight in recent years. But what does it really mean and how does it impact tax professionals? Learn about this emerging area of indirect taxation.

Register

**Global Mobility, Talent, & Rewards**

### Talent mobility innovations in the tech industry: What should other companies know?

*August 2 | 2 p.m. ET | 18:00 GMT*

Technology companies are increasingly viewed as innovators in talent mobility cost effectiveness, service delivery models, and employee experience. Do these innovative approaches work effectively in other industries? Explore effective practices in talent mobility from the technology industry and lessons learned from non-tech companies that are adopting such innovations.

Register

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