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## Affordable Care Act – Controlled Group Status

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### INTRODUCTION

The **Affordable Care Act (ACA)** imposes a penalty on **Applicable Large Employers (ALEs)** that do not offer minimum essential coverage to all full-time employees (and their dependents). Penalties may also apply if coverage is offered, but is unaffordable or does not provide minimum value. These rules are often referred to as *Employer Shared Responsibility Provisions* or the “pay or play” penalty.

### APPLICABLE LARGE EMPLOYER STATUS

Only companies that meet the ALE threshold are subject to the ACA’s pay or play rules. An employer must employ, on average, at least 50 full-time employees, including full-time equivalents (FTEs), on business days during the preceding calendar year to qualify as an ALE.

***To determine if a company is an ALE, aggregation rules apply for companies that are related or commonly owned.*** Under these rules, all employees of a controlled group of businesses or an affiliated service group are taken into account to determine if an employer is subject to the Employer Shared Responsibility provision.

If the combined total meets the ALE threshold, each separate member of the group is subject to the pay or play rules, even those companies that on their own do not have enough employees to meet the threshold. Each of the companies that are combined under these aggregation rules is referred to as an ALE member.

### COMMON OWNERSHIP RULES

If your company has common ownership with other entities, you will need to first determine if your company is part of a “controlled group” before you can properly assess whether your company would be subject to the Employer Shared Responsibility provisions.

### WHAT IS A CONTROLLED GROUP?

The definition of “controlled group” is contained in IRS Code sections 414(b) and (c). In general, a controlled group exists if two or more corporations, trades or businesses (including partnerships and proprietorships) have one of the following relationships:

#### Parent-Subsidiary Controlled Group

A parent-subsidiary controlled group exists when one or more chains of organizations are connected through ownership of a controlling interest with a common parent organization if:

- A controlling interest in each of the organizations (except the common parent) is owned by one or more of the other organizations in the group; and
- The common parent organization owns a controlling interest in at least one of the other organizations.

#### Brother-Sister Controlled Group

A brother-sister controlled group exists when five or fewer individuals, estates or trusts own a controlling interest (80 percent or more) in each organization and have effective control. “Effective control” generally means more than 50 percent of the organization’s stock or profits, but only to the extent the ownership is identical with respect to each such organization

#### Combined Controlled Group

A combined controlled group exists of three or more organizations that are structured in the following way:

- Each organization is a member of either a parent-subsidiary or brother-sister controlled group; and
- At least one organization is the common parent organization of a parent-subsidiary controlled group and is also a member of a brother-sister controlled group



In addition, constructive ownership, or attribution, rules apply for purposes of determining whether a group of organizations is a controlled group under Code sections 414(b) and (c). These rules treat a person as owning an interest in an organization that is not actually owned by that person. Attribution may result from family or business relationships.

Note that employers who file as **qualified separate lines of business (QSLOBs)** for other employee benefit purposes (such as non-discrimination testing) cannot rely on the QSLOB rules for purposes of the ACA Employer Shared Responsibility provisions.

**NEXT STEPS**

**As part of our efforts to remain compliant with the Affordable Care Act, we are asking our clients to confirm their status as a "single entity" or if they should be considered part of a "controlled group".**

Determining whether a controlled group exists is typically a complicated analysis and usually requires the expert advice of a tax and/or legal advisor. Note that a controlled group may include Human Capital Concepts (HCC) clients as well as companies that do not use HCC services.

HCC strongly recommends that you consult with an attorney or tax advisor to determine if your company is part of a controlled group.

***Please confirm your status by January 31, 2017. If you have any questions or concerns, please contact Tina Johnson at [tjohnson@hcchr.com](mailto:tjohnson@hcchr.com).***

D We confirm that controlled group status does not impact our company

D We confirm that we are part of a controlled group with the following companies:

Company Name	HCC Client Circle one	Company Name	HCC Client Circle one
	Y N		Y N
	Y N		Y N
	Y N		Y N
	Y N		Y N

Signature (as an authorized representative of "Client Company")

Name (Printed)

Title

Date