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FOCUS ON BENEFITS: What? You want your 2012 bonus before the end of the year?

Usually, come year-end, you're hearing all kinds of suggestions about how to delay income until next year, so as to reduce the tax burden this year. This year is different. Yes, as the fiscal cliff talk reminds us daily income tax rates for those with high incomes may go up. But there's more, and its not dependent on what Congress does about the fiscal cliff or the deficit …. Starting in 2013, highly compensated employees have to pay an additional Medicare tax.

Wages over $200,000 will be subject to an additional 0.9% Medicare tax. In addition, unearned income (such as capital gains, dividends, interest) of high income individuals will, for the first time ever, be subject to a Medicare tax of 3.8%. (This applies only to individuals with adjusted gross income (AGI) over $200,000, and married couples with AGI over $250,000.)

Even though it may be unpleasant to think about paying taxes any earlier than necessary, high earners may want to do just that. Your highly compensated employees may be interested in the strategies listed below. They should keep in mind that these strategies may affect their alternative minimum tax liability, and both employers and employees should seek advice from competent tax professionals.

What can the employer do?

Pay bonuses in 2012, rather than 2013.

Accelerate vesting (not payment) of deferred compensation in a nonqualified plan subject to Section 409A of the Code. This would trigger the requirement to pay FICA in 2012 before the additional Medicare tax applies. (If a tax-exempt entity sponsors the plan, this may trigger income tax liability as well.

Vest restricted stock, unvested stock options, or stock appreciation rights.

Consider plan amendments that would permit employees to take tax acceleration strategies.

What can the employee do?

If you reached the age of 70 in 2012, take your first Required Minimum Distribution from your retirement plan in 2012, rather than delaying to April of 2013.

Realize capital gains income, for example on stock held pursuant to an option exercise, or make an 83(b) election for restricted stock.

Take an in-service distribution from your 401(k) plan. (May require amending the plan)

Complete an in-plan Roth conversion in your 401(k) plan, or roll over an in-service distribution to a Roth IRA. (May require amending the plan)

Whatever you decide, be very careful when attempting to accelerate income in any plan that is subject to Section 409A of the Code. And, as always, seek legal advice before making changes to any employee benefit plan.