



What are stock attribution rules?

They are rules under the Internal Revenue Code (IRC) that require certain family members (and other entities) be considered when determining ownership for plan purposes. They impact whether employers are “related” and also whether employees are considered to be “highly compensated” or “key employees”.

The stock attribution rules often hit employer from left field, because they don’t exactly follow common sense. For example, a husband and wife own separate, unrelated companies. Under these rules, the two companies are considered “related” for plan purposes, unless certain limited exceptions apply.

What rules apply in determining whether employers are related for plan purposes?

The stock attribution rules under IRC section 1563 apply for this purpose. So what does that mean in English? Certain individuals are “considered” to “own” the same percentage of a business as the actual owner(s) after considering family relationships as well as indirect ownership through other entities such as other corporations, trusts, or partnerships.

What does it mean to be a “related employer” from a plan perspective?

The actual term is a “controlled group”, and when a controlled group exists, all of the employers in the controlled group are generally considered to be a single employer for plan purposes. In layman’s terms this means that different employers may (or may not) be able to maintain separate plans (or even sponsor a plan) because ALL of the employees of the employer (i.e. the controlled group) must be considered. In other words, certain testing applies the group as a whole.

What constitutes a controlled group?

In general, a controlled group exists when 5 or fewer owners (direct or indirect) own more than 80% of the collective businesses and have common ownership of 50% or more, or there is a parent-subsidiary relationship.

Can “related employers” maintain separate plans?

Sometimes; it really depends upon plan design, the demographics of the workforce, and a number of other factors.

How do the “attribution rules” impact who is considered to be highly compensated and/or a key employee?

As if this wasn’t confusing enough, different (but similar) rules apply when determining which employees are considered to be highly compensated and key employees.

Under these rules (IRC section 318 specifically), ownership is attributed to certain family members as well as indirect ownership through other entities such as other corporations, trusts, or partnerships; however, there are slight differences between these rules and the rules used to determine whether two (or more) employers are related.

Is a spouse attributed ownership from his or her spouse?

Generally, yes. When determining whether businesses are related, there are limited exceptions but most spouses are attributed ownership from their spouse under these rules.

A spouse of an owner, however, is always (unless legally separated or divorced) considered to be an “owner” for purposes of determining highly compensated and key employee status.

What about children?

Under the controlled group rules (i.e. IRC section 1563), a distinction is made between adult children and children who have not attained age 21. There is limited attribution between parents and adult children. These rules also apply to parents, grandparents, and grandchildren.

Under the rules applicable to highly compensated/key employee determinations (i.e. IRC section 318), children, regardless of age, are attributed ownership of their parents. There is also attribution between grandparents and parents.

How can I learn more?

Please contact us to learn more about these rules and how they may impact your plan and plan participants.