

Controlled Group and Affiliated Service Group (ASG) Checklist

Related Employers/Entities

The Internal Revenue Code (the “Code”), and the regulations promulgated thereunder, require that certain related entities are treated as a single employer for qualified plan purposes.

The rules for determining whether an entity is “related” under the Code can be complex. We strongly recommend that you seek legal counsel to help determine whether your organization(s) is/are part of a controlled group or affiliated service group (“ASG”).

From a general perspective, employees of employers which are part of a *controlled group* or ASG must be aggregated for testing because they are considered to be under common control. If an employer that falls within these descriptions is excluded from testing or an employer that is not related *is* included, the plan may experience qualification issues. It is important to note, that an organization might be part of both a controlled group and ASG, so all elements must be explored to ensure proper design, implementation, and administration of a qualified plan.

The following are questions/considerations to assist in the determination of whether organization(s)/entity(ies) need to explore more deeply the potential existence of a controlled group or ASG.

Controlled Group of Businesses

Organizations can be part of a controlled group in either parent-subsidary groups or brother-sister groups.

- **Parent-Subsidiary Group:** a parent-subsidiary controlled group exists when one business owns at least 80% of the total combined voting power, or the total value, of all classes of shares of stock of all of the corporations.
- **Brother-Sister Group:** a brother-sister controlled group exists when two or more corporations in which five or fewer persons who are individuals, estate or trusts own at least 80% of the total combined voting power, or the total value, of all classes of shares of stock of all of the corporations, and own more than 50% of the total combined voting power, or the total value, of all classes of shares of stock of all of the corporations, where each person’s ownership is taken into account only to the extent such stock ownership is identical with respect to each such corporation.
- **Combined Group:** a controlled group may also be a combination of parent-subsidiary and brother-sister controlled groups. This occurs if a business is the common parent organization in a parent-subsidiary group and also part of the brother-sister group.

For purposes of Section 414(c), the terms company and business include corporations, partnerships, sole proprietorships, tax-exempt organizations, trusts and estates to the extent they conduct a trade or business.

Attribution

In determining the relationship of organizations both the direct and/or indirect ownership of entities must be considered. Code section 1563 governs indirect ownership and is referred to as the attribution rules. Generally, attribution can be either by way of family or by way of organization. Also, the attribution rules differ between parent-subsidary and brother-sister groups. These attribution rules should be applied at the onset of determining whether organizations/entities are related.

If any of the following exists there is a chance that attribution may exist. And the attribution may result in related entities.

- Does anyone own stock option in the company?
- Does anyone own a 5% or more interest (either directly or indirectly) of the capital/profits of a partnership which in turn owns any of the company?
- Does anyone own a grantor trust which owns all or part of a company?
- Does anyone own at least a 5% or more actuarial interest (either directly or indirectly) in an estate/trust in which they are a beneficiary where the estate/trust owns any part of a company? (Stock owned by employees' trust under Section 401(a) which is exempt from tax under Section 501(a) is not included).
- Does anyone own a 5% or more interest (either directly or indirectly) of a corporation which owns any of the company?
- Does anyone's spouse own any part of a company (either directly or indirectly)?
- Do anyone's children (under age 21) own any part (either directly or indirectly) of a company?
- Do anyone's children (21 years or older), grandchildren, parents or grandparents own (either directly or indirectly) more than either 50% of the stock entitled to vote, or the total value of all classes of stock in a corporation?

Affiliated Service Groups under IRC 414(m)

Similarly, to a controlled group an affiliated service group (ASG) will be treated as a single employer for qualified plan purposes. However, an ASG doesn't need to meet either the parent-subsidary, brother-sister or combined controlled group rules. In fact, the group of entities can fail to be a controlled group and still be an ASG. Typically an ASG is at least two organizations (corporations, trusts, sole proprietorships, partnerships, LLCs, etc.), which are typically service organizations. Professional service organizations are practices such as legal, medical/health, accounting, consulting, insurance, etc.

Determination of ASG can be extremely complicated. Even more so than a controlled group as they are governed by many more moving parts.

The following elements might indicate existence of an ASG:

- A services organization (if it's a corporation it must be a professional services corporation)
- Some ownership interest (but not to the level of a controlled group)
- Regular performance of services by one organization on behalf of another organization for third party(ies)
- One organization derives significant amount of business from provision of services to other organizations for service types that are historically performed by employees

Attribution

ASGs also have attribution rules applied. However, Code section 318 governs ASG attribution rules.

If any of the following exists there is a chance that attribution may exist. And the attribution may result in related entities.

- Does anyone's spouse, children, grandchildren, parents, or grandparents' own stock (either directly or indirectly) in an entity?
- Does anyone own (either directly or indirectly) any of a partnership, S-corporation, estate, or trust which owns any of another entity?
- Does anyone own 50% or more of a C corporation which owns any of another entity?
- Does anyone own an option to acquire stock or an option to acquire an option?

Special Rules Applicable to Code Section 501(a) Tax-Exempt Organizations

The following elements could indicate a controlled group exists for a tax-exempt organization:

- Are at least 80% of the directors/trustees of one of the exempt organization's representatives of another organization? A trustee/director is treated as a representative if he/she is a trustee, director, agent, or employee.
- Are at least 80% of the directors/trustees of one of the exempt organizations directly or indirectly controlled by another organization? A trustee/director is controlled by another organization if the other organization has the power to remove/replace said trustee/director.

Ashby W. Price, CFA, AIF, CRPS

804.622.1727

ashby@ashwoodfp.com | www.ashwoodfinancialpartners.com

Securities offered through Kestra Investment Services, LLC (Kestra IS), member FINRA/SIPC. Investment advisory services offered through Kestra Advisory Services, LLC (Kestra AS), an affiliate of Kestra IS. Ashwood Financial Partners is not affiliated with Kestra IS or Kestra AS. Investor Disclosures - [Disclosures](#)