The ACA’s Cadillac Tax on High-cost Health Coverage

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The ACA’s Cadillac Tax on High-cost Health Coverage

Presented by: Erica Storm, Esq., and Becca Kopps, Esq.

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Introduction
Today’s Presenters

Erica Storm, Esq.
• Employment and benefits attorney
• Expertise in Affordable Care Act and other health plan compliance issues
• Educates companies on compliance obligations

Becca Kopps, Esq.
• Employment and benefits attorney
• Primary focus: Affordable Care Act issues
• Creates educational materials and compliance resources
Webinar Logistics

To call in to connect to audio:

- Phone number: 1-877-668-4493
- Access code: 929 446 429

We welcome your questions at any time! Questions will be addressed at the end of the session.

Select Q&A and choose “Send to All Panelists” to submit your questions.
What is the Cadillac Tax?
Tax on High-Cost Health Coverage

Beginning in 2018:

- ACA imposes a 40 percent excise tax on high-cost group health coverage
- The tax is known as the “Cadillac tax” and is not deductible

- Taxes the “excess benefit”—the amount by which the cost of an employee's applicable employer-sponsored health coverage exceeds an annual dollar limit

- Intended to encourage companies to choose lower-cost health plans for their employees
Important Notes

- Applies to all employers, regardless of size
- Assessed for the calendar year, with the excess calculated on a monthly basis
Annual Limits

$10,200 for individual coverage

$27,500 for other-than-individual coverage
High-Risk Professions

Higher limits apply if a majority of employees work in a high-risk profession

- Repairing/installing electrical/telecommunications lines
- Law enforcement officers and fire protection employees
- EMTs, paramedics and first responders
- Longshore workers
- Construction, mining, agriculture, forestry and fishing employees
- High-risk profession retirees (employed for 20+ years)

$11,850 for individual coverage
$30,950 for other-than-individual coverage
Other Dollar Limit Adjustments

- **Cost-based adjustments**
  - Health cost adjustment percentage (2018)
  - Cost-of-living adjustments based on CPI (after 2018)

- **Age/gender adjustments**
  - If employer’s workforce differs from national workforce characteristics

- **“Qualified Retiree” adjustment**
  - Initial limits same as high-risk
  - Applies to retirees receiving employer coverage, 55 or older, not eligible for Medicare

**CAUTION**

No adjustment for high-cost geographic areas
Cadillac Tax Guidance

**Notice 2015-16**
- Issued Feb. 23, 2015
- First step in developing guidance to implement the Cadillac tax
- Addressed: defining applicable coverage, determining cost of coverage, applicable dollar limit and dollar limit adjustments

**Notice 2015-52**
- Issued July 30, 2015
- Continues implementation of Cadillac tax
- Addressed: who pays, employer aggregation, allocation and payment of the tax

**CAUTION**
These rules are not finalized: taxpayers may not rely on guidance in these notices.
What types of coverage are subject to the tax?
Applicable Employer-sponsored Coverage

“Coverage under any group health plan made available to the employee by the employer that would be excluded from income”

- Insured or self-insured plan of an employer or employee organization to provide health care

- Regardless of whether coverage is paid for by the employer or employee
Types of Coverage Included

- Major medical plan
- Health FSAs
- HSAs/Archer MSAs
- HRAs
- Executive physical programs
- On-site medical clinics
- Retiree coverage

- Multiemployer plans
- Some specified disease/fixed indemnity health insurance (employer-paid or pre-tax)
- Governmental group health plans for civilian employees
- Wellness programs?
Types of Coverage Excluded

- Long-term care coverage
- Certain dental and vision plans
- Coverage only for accident or disability insurance
- Liability and supplemental liability insurance
- Workers’ compensation insurance
- Auto medical payment insurance
- Credit-only insurance
- Some specified disease/fixed indemnity health insurance (after-tax)
- Governmental group health plans for military employees
- Employee after-tax HSA/Archer MSA contributions*
- EAPs that are excepted benefits
- On-site clinics offering de minimis medical care
Special Rules

**Self-employed Individuals**
- Applies to self-employed individuals who are employees under the tax code
- Coverage treated as applicable employer-sponsored coverage if a tax deduction is allowed

**Governmental Plans**
- Applies to group health plans of federal, state and local government employers
- Employer-sponsored coverage provided to civilian employees

Unclear whether same types of coverage are excluded for these plans; clarification would be helpful
Who calculates and pays the Cadillac Tax?
Responsibility for Calculating the Tax

• The employer is responsible for calculating the tax
  – For multiemployer plans, the plan sponsor is responsible for calculation

• Employer/plan sponsor must:
  – Calculate tax
  – Allocate tax among coverage providers
  – Notify entities liable for payment and IRS of tax amount
Responsibility for Paying the Tax

- The Cadillac tax is assessed against the “coverage provider”
- Identity of coverage provider depends on the type of plan
## Coverage Provider

<table>
<thead>
<tr>
<th>Type of Plan</th>
<th>Coverage Provider</th>
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<tbody>
<tr>
<td>Fully insured health plan</td>
<td>Health insurance issuer</td>
</tr>
<tr>
<td>HSA or Archer MSA</td>
<td>Employer making contributions to the account</td>
</tr>
<tr>
<td>Self-insured plan/any other coverage (including HRAs and health FSAs)</td>
<td>“Person that administers the plan benefits”—<em>more guidance needed</em></td>
</tr>
<tr>
<td></td>
<td>• <strong>Proposed Option 1</strong>: person responsible for day-to-day functions (TPA for self-insured plans)</td>
</tr>
<tr>
<td></td>
<td>• <strong>Proposed Option 2</strong>: person with ultimate authority for administration of benefits</td>
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Employer Aggregation

- Section 414 aggregation rules apply
- IRS invited comments on identifying:
  - Applicable coverage taken into account
  - Employees taken into account for cost adjustments
  - Taxpayer responsible for calculating and reporting excess benefit
  - Employer liable for penalties
Passing the Cadillac Tax on to Employers

- Any amount reimbursed to coverage provider will be additional taxable income to the coverage provider.
- Coverage provider may pass cost of Cadillac tax and income tax on to employer.
- May require separate billing.
How is the Cadillac Tax calculated?
Tax Calculation

Step 1
• Determine aggregate cost of EE’s applicable employer-sponsored coverage for each month in the calendar year

Step 2
• Determine EE’s excess amount for each month

Step 3
• Determine EE’s excess benefit

Step 4
• Excess benefit x 40%
Calculation Components

**Aggregate cost**
- Sum of the costs for each coverage

**Excess amount**
- Amount by which aggregate monthly cost of coverage exceeds monthly limitation
- Cost of coverage – limitation = excess amount

**Excess benefit**
- Sum of the EE’s monthly excess amounts for the taxable period
- Taxable period generally = calendar year
Tax Calculation Review

Step 1
- Determine aggregate cost of EE’s applicable employer-sponsored coverage for each month in the calendar year.

Step 2
- Determine EE’s excess amount for each month.

Step 3
- Determine EE’s excess benefit.

Step 4
- Excess benefit x 40%
Determining Cost of Coverage

Use rules similar to rules for determining applicable COBRA premium

- Separate for self-only and other than self-only
- Do not include any Cadillac tax that is due
Determining Applicable COBRA Premium

Average cost to plan of providing coverage to similarly-situated individuals, calculated in good faith

- **Insured plan**: carrier’s premium for active employees
- **Self-insured plan**: Rate using actuarial basis or past-cost method
- Made in advance for 12-month period
### Special Rules

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<tr>
<th>FSAs</th>
<th>HSAs/Archer MSAs</th>
<th>HRAs</th>
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<tbody>
<tr>
<td>• Salary reductions + cost of additional reimbursement</td>
<td>• Employer contributions + salary reductions (proposed)</td>
<td>• COBRA premium is unclear</td>
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<tr>
<td>• Including employer contributions</td>
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IRS is considering an approach where contributions are allocated on a pro-rata basis throughout the year, regardless of when amounts are contributed.
<table>
<thead>
<tr>
<th>IRS guidance includes several proposed approaches</th>
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<tbody>
<tr>
<td>Defining similarly situated individuals</td>
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<tr>
<td>Setting COBRA premium for self-insured plans</td>
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<tr>
<td>Determining cost for HRAs</td>
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Tax Allocation

Step 1: • Determine coverage provider’s share of EE’s coverage

Step 2: • Apply % to EE’s excess benefit amount

Step 3: • Coverage provider’s share of excess benefit x 40%
Penalties
What if a miscalculation results in too little tax being paid?

**Responsibility**
- Employer or plan sponsor will have to pay a tax penalty
- Coverage provider will pay amount of additional tax

**Penalty Amount**
- 100% of additional tax that must be paid
- Plus interest

**Penalty Relief**
- If employer did not know that failure existed (and would not have known if reasonably diligent)
- If due to reasonable cause (not willful neglect) and failure is corrected within 30 days
- If due to reasonable cause (not willful neglect) and penalty would be excessive or inequitable
Planning for the Cadillac Plan Tax
Employer Action Items

- Starting thinking about a strategy now
- Determine which benefits are subject to tax
- Coordinate with coverage providers
- Estimate tax exposure for 2018 and beyond
- Consider plan changes that reduce cost of plans (while meeting other requirements)
Questions?
Thank you!