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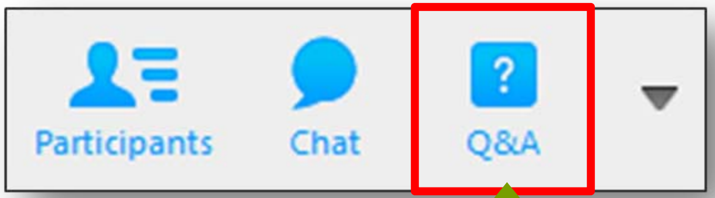
We welcome your questions at any time! Questions will be addressed at the end of the session.



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

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
- Addresses: 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
- Addresses: who pays, employer aggregation, allocation and payment of the tax

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

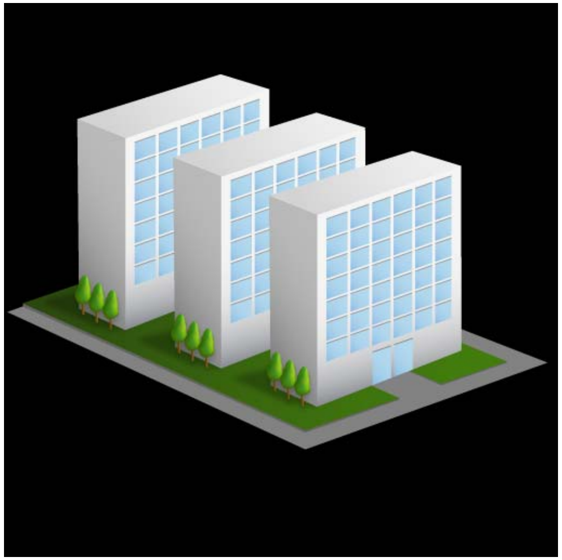
- The Cadillac tax is assessed against the "coverage provider"
- Identity of coverage provider depends on the type of plan

Coverage Provider

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

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

FSAs	HSAs/Archer MSAs	HRAs
• Salary reductions + cost of additional reimbursement • Including employer contributions	• Employer contributions + salary reductions (proposed)	• COBRA premium is unclear

IRS is considering an approach where contributions are allocated on a pro-rata basis throughout the year, regardless of when amounts are contributed

IRS Proposals

IRS guidance includes several proposed approaches		
Defining similarly situated individuals	Setting COBRA premium for self-insured plans	Determining cost for HRAs

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?

Kinloch
CONSULTING GROUP, INC.

Thank you!