

## Corporate Tax - USA

### Steering the Cadillac tax: an opportunity for employers and other stakeholders

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March 20 2015

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#### Introduction

The excise tax on high-cost, employer-sponsored health coverage (commonly referred to as the 'Cadillac' tax) first received considerable attention when the Patient Protection and Affordable Care Act was enacted in 2010. The Cadillac tax is effective for taxable years beginning after December 31 2017. With the issuance of Internal Revenue Service (IRS) Notice 2015-16, employers and other stakeholders have an early opportunity to participate formally in the rule-making process. This opportunity also involves the development of further rules concerning Consolidated Omnibus Budget Reconciliation Act (COBRA) continuation coverage.

#### Cadillac tax

In general, the Cadillac tax is a 40% non-deductible tax on any non-excluded, excess health benefit provided to an employee or former employee. An excess health benefit consists of the excess, if any, of the aggregate cost of applicable healthcare coverage for an employee for a given month over the applicable dollar limit for the employee for such month.

The entity liable for the Cadillac tax is:

- the health insurance issuer, in the case of applicable coverage provided under a group health plan;
- the employer, if applicable coverage consists of coverage under which the employer makes contributions to a health savings account or Archer medical savings account; and
- the person that administers the plan, in the case of any other applicable employer-sponsored coverage.

Regardless of which entity is liable for the Cadillac tax, the employer must calculate the tax and notify the entity of the amount of its liability. Therefore, employers have a direct administrative stake in the Cadillac tax as well as a direct or indirect economic stake, depending on the nature of the applicable coverage.

#### COBRA continuation coverage

While the Cadillac tax represents a new provision of the Internal Revenue Code (Section 4980I), it relies on existing code provisions for some key concepts. In particular, the statute provides that the cost of the applicable coverage is determined under rules similar to those governing the COBRA applicable premium (Section 4980B). However, comprehensive guidance has yet to be issued on some issues relevant to the COBRA applicable premium, including:

- how to determine which non-COBRA beneficiaries are similarly situated;
- specific methods for self-insured plans to determine the COBRA applicable premium; and
- how to determine the COBRA applicable premium for health reimbursement arrangements.

In recognition of the need for additional guidance, Notice 2015-16 invites comments on both the Cadillac tax and such aspects of COBRA. While some differences between the two sets of rules may be appropriate or necessary, IRS Notice 2015-16 indicates that future guidance will likely attempt to harmonise the COBRA rules with the rules applicable to the Cadillac tax to the extent practicable.

#### Comment

The Cadillac tax is effective for taxable years beginning after December 31 2017. Therefore, IRS

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Notice 2015-16 represents a valuable opportunity for stakeholders to comment on their concerns and preferred approaches well in advance of its implementation.

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