

“Steering” the Cadillac Tax II: An Additional Opportunity for Employers and Other Stakeholders

August 5, 2015

Our March 2015 client alert [“Steering’ the Cadillac Tax: An Opportunity for Employers and Other Stakeholders”](#) addressed IRS Notice 2015-16, which was an initial request for comments regarding the excise tax on high-cost, employer-sponsored health coverage (commonly referred to as the "Cadillac Tax") enacted as part of the Patient Protection and Affordable Care Act of 2010 ("PPACA"). ***This client alert updates that discussion to include IRS Notice 2015-62 ("Notice 2015-62"), which was released at the end of last month and provides employers and other stakeholders an additional opportunity to comment on specific issues in advance of the Cadillac Tax implementation.***

I. Notice 2015-62

Notice 2015-62 addresses five additional issues related to the Cadillac Tax:

1. The coverage provider liable for the Cadillac Tax, and specifically the determination of the “person that administers plan benefits” when such person is liable for any applicable Cadillac Tax.
2. The employer aggregation rules to be applied when identifying:
 - The applicable coverage made available by the employer;
 - The employees taken into account when making applicable age and gender adjustments;
 - The taxpayer responsible for calculating and reporting the excess benefit; and
 - The employer liable for any penalty for failure to properly calculate the Cadillac Tax.
3. The cost of applicable coverage:
 - The determination period for calculating the cost of applicable coverage;
 - The exclusion from applicable coverage of amounts attributable to the Cadillac Tax;
 - The proper allocation of contributions to HSAs, Archer MSAs, FSAs, and HSAs when determining the cost of applicable coverage;
 - The determination of the cost of applicable coverage under FSAs with employer flex credits; and
 - The inclusion in applicable coverage of self-insured coverage includible in an employee’s gross income.

4. The age and gender adjustments to the dollar limit used when determining whether coverage is subject to the Cadillac Tax.
5. The notice and payment rules applicable when coverage is subject to the Cadillac Tax.

For some issues, Notice 2015-62 requests comments on specific approaches under consideration by the IRS. For example, Notice 2015-62 describes two possible categories of persons that administer plan benefits: (1) the person responsible for performing the day-to-day functions that constitute the administration of plan benefits or (2) the person that has the ultimate authority or responsibility with respect to the administration of plan benefits. Because the person that administers plan benefits will have direct liability for any applicable Cadillac Tax, persons in each category have a stake in the approach ultimately chosen by the IRS.

For other issues, Notice 2015-62 does not identify specific approaches under consideration but instead requests comments more generally. For example, an employer must (1) calculate for each taxable period the amount of any excess benefit subject to the Cadillac Tax and the applicable share for each coverage provider and (2) notify the IRS and each coverage provider of the amount so determined. Notice 2015-62 requests comments on the administrative and other issues raised by these requirements which potentially affect employers and other stakeholders.

II. What Stakeholders Can Do Now

The Cadillac Tax is effective for taxable years beginning after December 31, 2017. Notice 2015-62 provides another valuable opportunity for stakeholders to comment on their concerns and preferred approaches to the Cadillac Tax well in advance of its implementation. The IRS has requested that any such comments be submitted no later than October 1, 2015.

This client alert has discussed the Cadillac Tax in the context of the request for comments recently issued by the IRS in Notice 2015-16 and Notice 2015-62. For more information about these IRS Notices, PPACA in general, or other issues concerning your employee benefit plans, please contact [Joanne C. Youn](mailto:jyoun@capdale.com) at jyoun@capdale.com or at 202.862.7855.



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