



Additional Guidance Issued on the Cadillac Plan Tax

Issued date: 08/24/15

Beginning January 1, 2018, a 40% excise tax will apply on the cost of applicable coverage that exceeds prescribed thresholds. Commonly, this is referred to as the “Cadillac Plan Tax.” The 2018 thresholds are \$10,200 for self-only coverage and \$27,500 for coverage other than self-only. These thresholds are annualized and adjusted in certain circumstances.

The IRS issued Notice 2015-16 to begin the process of developing regulatory guidance regarding the excise tax on high cost employer-sponsored health coverage.

On July 30, 2015, the IRS issued additional guidance in the form of Notice 2015-52. Rather than providing instruction, the notice identifies issues and describes potential approaches which could be incorporated in future proposed regulations and invites comments. After considering the comments on both notices, Treasury and IRS intend to issue proposed regulations. The proposed regulations will provide further opportunity for comment, including an opportunity to comment on the issues addressed in the preceding notices. Proposed regulations are not expected before 2016.

Specifically this notice addresses:

- The effective date
- Identification of who is liable to pay the tax
- Determining the cost of applicable coverage
- Adjustments to the \$10,200/\$27,500 thresholds based on age and gender
- Allocation of the tax among multiple coverage providers
- Employer aggregation rules
- Payment of the tax

Below you will find additional information.

■ Effective Date

The Cadillac Plan Tax is effective for “taxable years beginning after December 31, 2017.” The Notice confirms that a taxable year is anticipated to mean a calendar year, not a plan year so that the effective date is January 1, 2018 for all plans. If a non-calendar year plan needs to make changes in order to avoid the tax, such changes must be done either with the 2017 plan year renewal or through a mid-year plan change on or before January 1, 2018.

■ Identification of the Payer

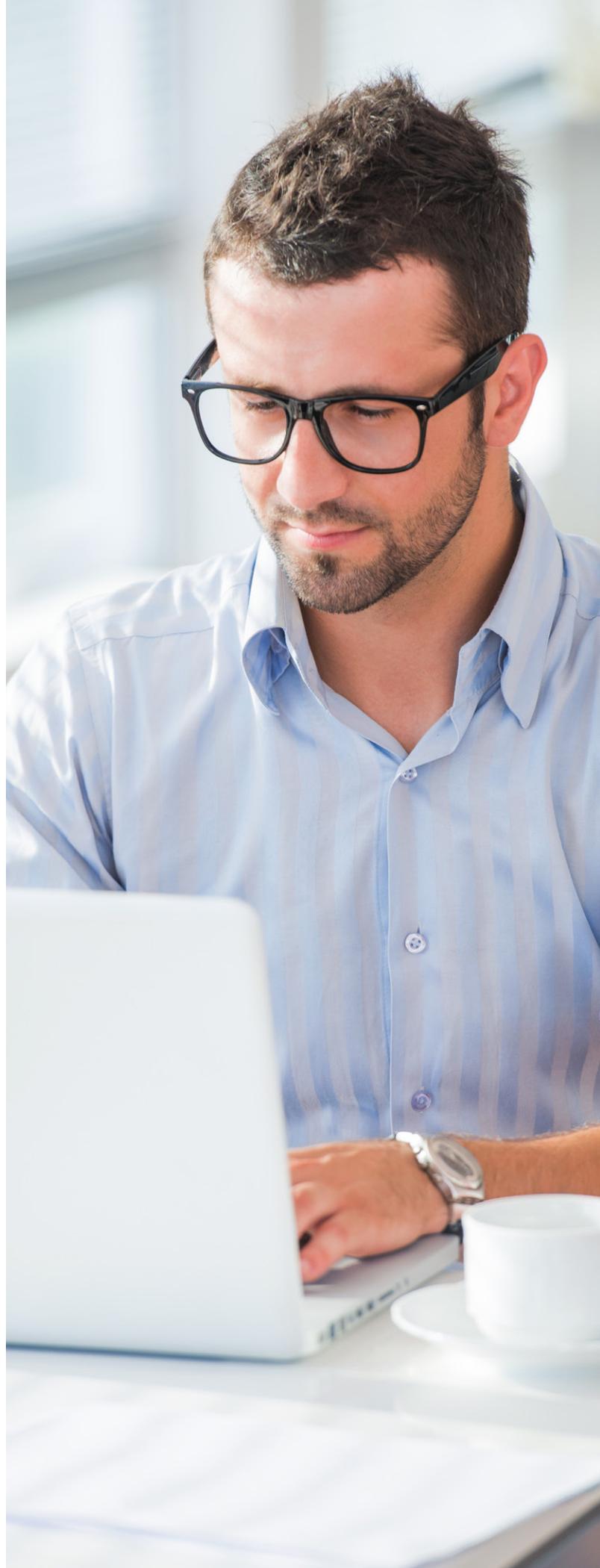
Under the ACA, the employer is required to determine the amount of the Cadillac Plan Tax on a monthly basis and then allocate that tax among “coverage providers.” So, while the employer is the party required to calculate the tax, the coverage provider is the entity responsible for paying the tax. The “coverage provider” is the insurer for an insured plan and the employer for an HSA. For self-funded plans, the coverage provider is the “person that administers the plan benefits” which is not further defined. The IRS proposes two approaches for consideration:

- Under the first approach, the coverage provider would be the person or entity responsible for performing day-to-day functions related to administration of the plan (e.g., processing claims or handling participant inquiries). This would be a third party administrator (“TPA”). This would likely be challenging in the case of multiple TPAs (e.g., one for the medical plan, one for the prescription drug benefit, and one for the health FSA).
- Under the second approach, the coverage provider would be the person or entity that has the ultimate authority or responsibility with respect to administration. Generally, this would be the employer.

■ Calculation of the Cost of Applicable Coverage

Determination period

To determine excise tax liability, an employer must determine the extent, if any, to which the cost of applicable coverage provided to an employee during any month of the calendar year exceeds the prescribed dollar limit. As the amount of the tax is calculated per employee per month over the calendar year, the IRS sees potential timing issues to calculate these amounts. In addition, some arrangements create additional complexity to determine the amount over the threshold in any month (e.g., experienced rated contracts or plans with a premium discount or holiday). The IRS seeks further comments on these issues.



Excluding income tax reimbursements from the cost of applicable coverage

If an entity other than the employer is responsible for paying the excise tax, that entity will likely pass the cost of the tax through to the employer in the form of increased service fees. The cost of applicable coverage does not include these amounts. However, there could be income taxes incurred due to the additional service fees. The IRS has requested comments on methods for excluding income tax reimbursements, including what tax rate to use.

Annual contributions to account-based plans

The full annual contributions to account-based plans such as HSAs may be made as of the first day of the plan year or otherwise not on a monthly basis (e.g., on a quarterly basis). This could trigger the excise tax in the months of contribution because the cost of applicable coverage is determined on a monthly basis. To avoid this result, the IRS indicated that it is considering an approach that would allow employers to apply annual contributions on a pro rata basis over the course of the year, regardless of the actual timing of contributions during that period.

Flex credits and carry-overs under health FSAs

The IRS stated that when an employer contributes nonelective flex credits to an FSA on behalf of an employee, the cost of applicable coverage includes:

- the employee's contributions; and
- the amount of non-elective flex credits actually used for reimbursements (i.e., unused nonelective flex credits are not included in the cost of applicable coverage).

In addition, under a safe harbor, amounts carried over from previous years will not be included in the cost of applicable coverage. The IRS plans to restrict the availability of this safe harbor if non-elective flex credits are available.

■ Age and Gender Adjustments to the Applicable Dollar Limit

The \$10,200/\$27,500 (as indexed) statutory thresholds can be increased based on the age and gender characteristics of all the employees of the employer in comparison to the national workforce. The IRS is considering rules allowing employers

to determine these characteristics based on a “snapshot” on the first day of the plan year. The IRS also indicated that it is developing age and gender adjustment tables to assist employers in applying the adjustment.

■ Employer Aggregation

For purposes of the excise tax generally, all employers that are part of a controlled group are treated as a single employer. The notice asks for comments on the challenges this statutory requirement presents in identifying applicable coverage, determination of the age and gender adjustment, employees taken into account for adjustment for employees in high risk professions or who repair and install electrical or telecommunications lines, identification of the taxpayer responsible for calculating and reporting the excess benefit, and employer liability for any penalty in the case of failure to properly calculate the tax.

■ Timing and Manner of Payment

The agencies are considering using the same manner of payment for the Cadillac Plan Tax applicable to the PCOR fee – using Form 7202 for payment of the tax.