



## Compliance Alert

### IRS Invites Comments on “Cadillac Tax” Implementation

March 31, 2015

#### Quick Facts:

- IRS Notice 2015-16 begins the process of implementing the ACA “Cadillac tax” starting in 2018.
- The purpose of the Notice is to describe and request comments on potential approaches for certain aspects of the tax.
- Taxpayers may not rely on the Notice for guidance regarding the Cadillac tax provision.
- Proposed or final regulations have not yet been issued on the Cadillac tax provision.
- The Notice does not require any action steps by employers.

Beginning in 2018, the Affordable Care Act (ACA) imposes an annual 40 percent excise tax on high-cost group health coverage. The tax, also known as the “Cadillac tax,” is intended to encourage companies to choose lower-cost health plans for their employees.

Recently, the Internal Revenue Service (IRS) issued [Notice 2015-16](#) to begin developing guidance to implement the Cadillac tax. Proposed or final regulations have not yet been issued on the ACA’s Cadillac tax provision.

The notice describes potential approaches with regard to a number of issues under the Cadillac tax. The IRS invites comments on these approaches, as well as any other suggestions that might be helpful. Taxpayers may not rely on the information provided in the Notice. However, the IRS notes that these potential approaches could be incorporated in future proposed regulations.

#### Overview of the Cadillac tax

The Cadillac tax provision is included in Internal Revenue Code (Code) section 4980I. This provision taxes the amount of an employee’s “excess benefit.” The excess benefit is the amount by which the monthly cost of an employee’s employer-sponsored health coverage exceeds the annual statutory limitation.



For 2018, the statutory dollar limits are:

- \$10,200 per employee for self-only coverage; and
- \$27,500 per employee for other-than-self-only coverage.

The cost of applicable coverage for purposes of the Cadillac tax is determined under rules similar to those used for determining the COBRA applicable premium. The tax amount for each employee's coverage will be calculated by the employer and paid by the coverage provider.

### **Applicable employer-sponsored coverage**

The Cadillac tax applies to “applicable employer-sponsored coverage” (both insured and self-insured). Applicable employer-sponsored coverage is coverage under any group health plan made available to the employee by the employer, which is excludable from the employee's gross income under Code section 106. The term “employee” includes any former employee, surviving spouse or other primary insured individual.

Applicable coverage also includes:

- health flexible spending accounts;
- health savings accounts;
- on-site medical clinics;
- retiree coverage;
- multiemployer plan coverage;
- governmental plans (excluding military coverage); and
- coverage only for a specified disease or illness and hospital indemnity or other fixed indemnity insurance (if paid on a pre-tax basis or a Code section 162(l) deduction is allowed).

### **Exclusions from applicable coverage**

Some types of coverage are generally excluded from applicable coverage, including:

- coverage under which medical benefits are secondary or incidental to other insurance benefits;
- long-term care coverage;
- limited scope dental and vision coverage; and
- coverage only for a specified disease or illness and hospital indemnity or other fixed indemnity insurance (if paid for exclusively with after-tax dollars or a Section 162(l) deduction is not allowed).

### **Overview of IRS proposals**

The Notice describes a number of potential approaches on certain aspects of the Cadillac tax provision, which may be included in future proposed regulations.



### ***Expected clarifications on applicable coverage***

The Notice indicates that clarifications on the definition of applicable coverage will follow, for example:

- The IRS expects future guidance to include executive physical programs and Health Reimbursement Arrangements (HRAs) as applicable coverage.
- The IRS anticipates that future regulations will exclude on-site medical clinics that offer only de minimis medical care to employees from the definition of applicable coverage.
- The IRS invites comments on how to treat on-site medical clinics that provide certain services in addition to (or in lieu of) first aid.
- The IRS is considering whether to propose approaches under which self-insured limited scope dental and vision coverage and certain employee assistance programs that qualify as an excepted benefit under the amended excepted benefits regulations would be excluded from applicable coverage for purposes of the Cadillac tax. Comments are requested on any reasons why the IRS should not implement these approaches.

### ***Determining the cost of applicable coverage***

A number of issues arise in calculating the COBRA applicable premium, including how to determine which non-COBRA beneficiaries are similarly situated, methods for self-insured plans to determine the applicable premium and how to determine the applicable premium for HRAs.

The Notice describes potential approaches for each of these issues for purposes of the Cadillac tax. The IRS is also considering whether these potential approaches should apply for determining the COBRA applicable premium.

- **The COBRA applicable premium is based on the cost of coverage for similarly situated non-COBRA beneficiaries.** The IRS anticipates that a somewhat similar standard will apply for the Cadillac tax, where the cost of the applicable coverage for an employee will be based on the average cost of that type of applicable coverage for that employee and all similarly situated employees. The IRS invites comments on this potential approach, including areas where more guidance would be beneficial. Future guidance will likely attempt to harmonize the COBRA rules with the Cadillac tax rules (although some differences may be appropriate).
- **Currently, there are two methods for self-insured plans to calculate the COBRA applicable premium: the actuarial basis method and the past cost method.** The IRS anticipates that, in general, these two methods will apply for determining the cost of applicable coverage for self-insured plans for purposes of the Cadillac tax, and it seeks comment on this approach.
- **The IRS invites comments on alternative approaches.** Instead of determining the cost of applicable coverage using rules similar to the COBRA applicable premium rules, some have suggested that this could be determined by referencing the cost of similar coverage available elsewhere (for example, through the public Marketplace), whether or not based on actuarial values, metal levels (bronze, silver, etc.) or other metrics.



### **Determination period**

The IRS anticipates that the method for calculating the cost of applicable coverage would be elected prior to the period for which the cost applies, under similar rules as the COBRA applicable premium. The IRS invites comments on whether the COBRA rules should apply for purposes of the Cadillac tax, and whether more guidance would be beneficial.

### ***Applicable dollar limit***

The IRS is considering an approach to clarify the application of the dollar limit for employees with both self-only and other-than-self-only applicable coverage (for example, self-only major medical coverage and supplemental coverage, such as an HRA, that covers the employee and his or her family).

The IRS invites comments on the following potential approaches, including any potential administrative difficulties, as well as any other approaches that might address this issue:

- Under one approach, the applicable dollar limit would depend on whether the employee's primary (major medical) coverage is self-only coverage or other-than-self-only coverage. The employee's primary coverage would be the type of coverage that accounts for the majority of the aggregate cost of applicable coverage.
- An alternative approach would apply a composite dollar limit determined by prorating the dollar limits for each employee according to the ratio of the cost of the self-only coverage and the cost of the other-than-self-only coverage provided to the employee.

### **Dollar limit adjustments**

The annual dollar limits for the Cadillac tax may be adjusted in certain circumstances. For example, a "health cost adjustment percentage" will be applied to determine the dollar limits for 2018, and a cost-of-living adjustment will be applied to determine the dollar limits for taxable years after 2018. In addition, the dollar limits are increased by an age and gender adjustment, if applicable for an employer. Higher dollar limits also apply for:

- qualified retirees; and
- employees engaged in a high-risk profession or employed to repair or install electrical or telecommunication lines.

The IRS intends to include rules regarding these adjustments in proposed regulations, and invites comments on the application and adjustment of the dollar limits.

### **Submitting comments**

The IRS invites comments on the issues addressed in the notice and on any other issues under the Cadillac tax provision. Comments should be submitted no later than May 15, 2015, and should reference Notice 2015-16. Comments may be sent electronically to [Notice.comments@irs.counsel.treas.gov](mailto:Notice.comments@irs.counsel.treas.gov) or mailed to:



CC:PA:LPD:PR (Notice 2015-16)  
Room 5203, Internal Revenue Service  
P.O. Box 7604  
Ben Franklin Station  
Washington, DC 20044

### **Reliance on Notice 2015-16**

Taxpayers may not rely upon the Notice for guidance regarding the Cadillac tax provision. The IRS also specified that no inference should be drawn from the notice concerning any provision of Code section 4980I other than those addressed in the notice or concerning any other section of the ACA or COBRA.

### **Summary**

Notice 2015-16 does not require any action steps by employers. However, the Notice does offer insight into the IRS's mindset for implementing the Cadillac tax. It also offers a significant opportunity for the public to provide feedback and suggestions that could help shape the final regulations.

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For further information on this or any other topics, please contact your EPIC benefits consulting team.

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