Health Care Reform–Cadillac Tax and Other Updates

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This Advisory supplements our previous advisories dated December 2016, December 2015 (as supplemented in January 2016), October 2014, October 2013, November 2012, November 2011, and October 2010, addressing certain requirements of the Affordable Care Act (“ACA”). Below is a summary of recent developments impacting some of those requirements. **Cadillac Tax**

The budget deal recently struck by Democrats and Republicans further delays, until 2022, the Cadillac Tax. As you recall, the tax, designed to impose a 40 percent tax on the cost of employer-sponsored health coverage over a threshold amount (e.g., $10,200 for individual coverage and $27,500 for family coverage, indexed to the CPI), was originally scheduled to go into effect in 2018. President Obama then signed into a law a two-year delay. That law further provided that the Cadillac Tax (if imposed) will be deductible. While bipartisan support exists for repealing the Cadillac Tax, there is no consensus on how to replace the lost revenue. As a result, employers should continue reviewing their health plans to assess whether future changes to avoid the tax may be required.

ACA Reporting Deadline and Good Faith Transition Relief Extended

For employers subject to the ACA's 2017 information-reporting requirements, the due date for delivering the 2017 Form 1095-C or -B to employees was extended from January 31, 2018 to March 2, 2018. The deadline for filing the appropriate forms with the IRS was ***not*** changed; those forms must be mailed by February 28, 2018 or filed electronically by April 2, 2018. Updated 2017 forms and instructions are available on the IRS website.

Additionally, penalties will not be assessed for incomplete or incorrect information on the 2017 ACA forms, provided the forms are filed or furnished on time and completed in “good faith.” In determining good faith, the IRS will consider whether reasonable efforts were made to prepare for reporting and furnishing the required information and the extent to which an employer is taking steps to ensure that it can comply with next year’s reporting obligations. The IRS does not anticipate extending its transition relief (i.e., due dates or good-faith relief) to reporting for 2018. **Other ACA Changes to Note**

Individual Mandate Repeal. As reported in our January 2018 Client Advisory, the Tax Cuts and Jobs Act (the “Act”) eliminates the shared responsibility payment for those individuals who fail to maintain minimum essential health coverage beginning January 1, 2019. **Employer Mandate**. The Act did ***not*** repeal the employer shared responsibility mandate or reporting requirements. Those requirements are still in play, and the IRS has begun notifying employers of their potential liability for the 2015 calendar year. The general procedures the IRS will use to propose and assess the employer shared responsibility payment are described in Letter 226J. Employers receiving an assessment have 30 days from the date of the letter to respond using Forms 14764 and 14765. Models of the letter and forms are available on the IRS website.

What’s Outstanding?

The last major ACA requirement that has yet to be implemented is application of nondiscrimination rules similar to IRC §105(h) to certain fully-insured group health plans. The IRS delayed enforcement until after regulations (or other guidance) are issued and, to date, none have been released. Nondiscrimination rules continue to apply to self-insured plans, although the expectation is that the new regulations (or other guidance) will likely update the current 105(h) regulations as well.

If you have any questions or compliance concerns, please contact our Employee Benefits group.