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Affordable Care Act's Cadillac Tax on High Cost Health Plans Delayed Two Years

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On December 18, 2015, Congress passed and President Obama signed a federal budget bill for 2016, including $1.1 trillion in spending and $622 billion in taxes. Also attached to the budget bill were several changes to the Affordable Care Act ("ACA"), most notably a two-year delay in implementation of the so-called "Cadillac Tax." The ACA changes took effect immediately upon the bill's signing.

The Cadillac Tax is a 40% non-deductible tax on health plans for health insurance costs. The tax was scheduled to go into effect in 2018 on plans exceeding $10,200 for single and $27,500 for family coverage. Insurance carriers and plan sponsors of self-insured plans would be responsible for paying the tax, but the burden would ultimately fall on employers and consumers with high cost plans. In August of 2015, the Kaiser Family Foundation predicted that in 2018, 26% of employers would be assessed the Cadillac tax on at least one of their health insurance plans if no changes to current plans were made. The federal budget bill delays implementation until 2020 and removes the provision that prohibited employers from deducting the cost of the tax as a business expense. Questions remain as to whether the tax will ultimately be repealed before it can go into effect.

The federal budget bill also places a moratorium on the Health Insurance Provider Fee, also known as the Health Insurance Tax ("HIT"), for calendar year 2017. Since 2014, the HIT has placed a tax on health insurance providers in the insured market based on the entity's annual net premiums, effectively allocating the fees based on market share. The cost of the tax is, generally, passed on to employers in annual rate increases. The HIT will now not be collected in 2017, but it will be collected for 2016 and for years from 2018 onward.

Lastly, the bill imposes a two-year moratorium on the ACA's medical device excise tax for all medical device sales in calendar years 2016 and 2017. Since 2013, the ACA has imposed a sales tax of 2.3% on all medical devices, generally paid by manufacturers or importers. The tax was intended to help fund the costs of expanding health insurance coverage by taxing an industry that saw significant financial benefit from the expansion.

While employers and health and welfare funds do not have to worry about the Cadillac Tax for 2018, they should still prepare for the implementation of the tax in 2020, as

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we wait to see if any further action will be taken on the tax with regard to further delay, amendment, or repeal.

If you have any questions about this issue, please contact Katherine A. Hesse, Brian P. Fox or the attorney responsible for your account, or call (617) 479-5000.

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