Segal Consulting

update

Compliance News for Multiemployer Plans

August 6, 2015

Additional Comments Sought on Implementation of the Affordable Care Act's Excise Tax

The Treasury Department (Treasury) and the Internal Revenue Service (IRS) are seeking additional comments on issues related to implementation of the Affordable Care Act's[1] 40 percent excise tax on the cost of high-cost health plans, which will take effect beginning in 2018.[2]

This *Update* provides an overview of the issues discussed in this new request for comments, Notice 2015-52,[3] which focuses on determining who pays the tax, how to calculate the cost of coverage for purposes of the excise tax, the age and gender adjustment to the threshold and certain processes related to payment of the tax. Comments on Notice 2015-52 are due by October 1, 2015.

Health Compliance News Highlights:

- A second Notice requests additional comments on the 40 percent excise tax on high-cost plans.
- Comments are due October 1, 2015.
- The Notice focuses on issues involving payment, calculating the cost of coverage, and age and gender adjustments.

Determining Who Pays the Tax

Notice 2015-52 confirms that for insured coverage, the health insurance carrier pays the tax. However, for self-insured coverage, the Notice invites comments on how to define the responsible entity. The statute gives little guidance, stating that the tax is paid by the coverage provider, defined as the "person that administers the plan benefits."

Notice 2015-52 requests comments on two possible ways to define "the person that administers the benefits":

- One approach would look to the entity responsible for performing the day-to-day plan administration functions, such as receiving and processing claims for benefits, responding to inquiries, or providing a technology platform for benefits information. Plan sponsors that are also the plan administrator would likely be responsible under this approach.

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[1] The Affordable Care Act is the shorthand name for the Patient Protection and Affordable Care Act (PPACA), Public Law No. 111-48, as modified by the subsequently enacted Health Care and Education Reconciliation Act (HCERA), Public Law No. 111-152.

[2] In general, all group health plans, including retiree-only plans, are subject to the excise tax. The base thresholds for 2018 are $10,200 for self-only coverage and $27,500 for other-than-self-only coverage. Under a special rule in the statute, multiemployer plans use the higher threshold ($27,500) for all plan participants. Higher thresholds will apply to certain participants (*e.g.*, individuals in high-risk professions and pre-Medicare-eligible retirees). (For a detailed discussion of the excise tax, see Segal Consulting's October 2014 *Health Care Reform Insights*, "Affordable Care Act's Excise Tax on High-Cost Health Plans.")

[3] Notice 2015-52, which was released on July 30, 2015, is available on the IRS website. For a summary of the previous request for comments, Notice 2015-16, see Segal's March 5, 2015 *Capital Checkup*, "Comments Sought on Implementation of the Affordable Care Act's Excise Tax."

- The other approach would look to the entity that has ultimate authority or responsibility with respect to administration of the benefits. The Treasury and IRS seek comments on whether that entity would be easy to identify and whether there might be multiple parties with such responsibility.

The Treasury and IRS specifically request comments on the application of these approaches for collectively bargained multiemployer health plans.

More Questions about Calculating the Cost of Coverage

Notice 2015-52 highlights the following issues and requests comments on each:

- ***Taxable Period*** The Treasury and IRS anticipate that the taxable period will be the calendar year for all plans. However, it appears that the taxable amount would be determined monthly. For account-based plans, such as Health Reimbursement Arrangements (HRAs), the Treasury and IRS are considering an approach that would allocate to each month of the plan year one-twelfth of the annual contributions to account-based plans, regardless of when the contributions are actually made.

- ***Determination Period*** The Treasury and IRS anticipate that plans will determine the cost of coverage after the end of the taxable year (*i.e.*, the calendar year). They seek comment on potential timing issues that will be faced by insured and self-insured plans.

- ***Excluding the Excise Tax Itself from the Cost of Coverage*** The Treasury and IRS recognize that insurers and other coverage providers that pay the tax may be reimbursed (on a taxable basis) by the plan sponsor. They seek comment on whether and how to exclude this reimbursement from the cost of coverage.

Age and Gender Adjustment

An age and gender adjustment to the threshold is available if the age and gender characteristics of an employer's workforce are different from those of the national workforce. Notice 2015-52 seeks comments on ways that Treasury and IRS may determine the age and gender characteristics of the national workforce and formulate the adjustment tables designed to simplify the calculation of the adjustment.

Notices and Payment

Notice 2015-52 also addresses two additional issues related to the process of paying the tax:

- ***Plan Notices to Coverage Providers*** Plans must notify their coverage providers and the IRS of each coverage provider's share of the excise tax. The Treasury and the IRS request comments on the form of this notice, as well as the timing for providing the notices.

- ***Payment of the Tax*** The Treasury and IRS are considering using the existing Quarterly Federal Excise Tax Return (Form 720) as the vehicle for paying the tax. If so, they would designate a particular quarter of the year for filing the return and paying this tax.

Next Steps

Notice 2015-52 is the second step in the rule-making process. The next step will be the release of a proposed rule, likely in 2016.

Plan sponsors may want to submit comments, which are due by October 1, 2015. Comments received on this notice and on the first one will form the basis of the proposed rule.

Segal Consulting

Segal's Excise Tax Forecaster has been developed to help sponsors model a plan's potential tax liability for up to 10 years using several different pricing assumptions. Contact your Segal consultant or Ed Kaplan for more information about modeling your plan's potential excise tax liabilities.

If you would like additional information about the compliance news discussed in this *Update*, contact your Segal consultant or the Segal office nearest you. Segal can be retained to work with trustees and their fund counsel on compliance issues.

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