Segal Consulting

update

Compliance News for Multiemployer Plans

January 19, 2018

Benefits and Related Provisions in the New Tax Law

On December 22, 2017, President Trump signed a far-reaching overhaul of the Internal Revenue Code (IRC) (New Tax Law[1]). The New Tax Law significantly cuts the tax rates for corporations and partnerships permanently and temporarily modifies the individual income tax brackets, standard deduction and exclusions.

In the benefits area, it effectively repeals the individual shared responsibility penalty of the Affordable Care Act by making it zero and eliminates the ability of employers to deduct many employment-related fringe benefits. The New Tax Law also modifies the deduction rules for public companies with respect to executives earning over $1 million and creates a new 21 percent excise tax on nonprofits that pay compensation in excess of $1 million.

Earlier versions of the proposed new tax legislation included numerous provisions affecting employer-sponsored health and retirement plans and individual retirement accounts (IRAs). The New Tax Law, as enacted, does not include most of those provisions, but some of the eliminated provisions could reappear in future legislation.

Most of the New Tax Law's provisions are effective in 2018. A notable exception is the effective elimination of the Affordable Care Act individual shared responsibility penalty, which is not effective until 2019.

This *Update* discusses the employee-benefit related provisions and next steps for plan sponsors.

Most of the provisions of New Tax Law do *not* impact multiemployer plans as plans, but do impact them as employers. One exception is the loan repayment provision discussed below. Another is the elimination of the penalty related to the Individual mandate under the Affordable Care Act.

Retirement Provisions

DC Plan Loan Repayment on Separation or Plan Termination

Many plans require a participant to repay the full outstanding balance of a plan loan immediately on separation from service or termination of the plan. If the participant does not repay the full outstanding balance, the unpaid balance is treated as a taxable distribution from the plan ("deemed distribution"). Prior to the New Tax Law, the participant would have had to roll over an equal amount into

New Law Highlights:

- Most of the provisions of New Tax Law do not impact multiemployer plans as plans, but do impact them as employers.
- The New Tax Law effectively eliminates the Affordable Care Act individual shared responsibility penalty, but not until 2019.
- Some changes were made to retirement plan rules, but many changes that were initially proposed did not make it into the final law.
- The New Tax Law suspends from 2018 through 2025 the ability of an employer to deduct, and in some cases the employee to exclude from income, a number of fringe benefits.
- A new employer tax credit was created for certain employers who provide paid leave under the Family and Medical Leave Act (FMLA).

NEW! On January 23, 2018 President Trump signed into law a continuing resolution to fund the federal government through February 8, 2018. That law delays the Affordable Care Act's tax on high-cost health plans (the Cadillac tax) until January 1, 2022.

[1] The official name is "An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018." You might see it referred to in the press and other articles as the "Tax Cuts and Jobs Act." This was its short title until final passage when the short title had to be dropped to conform with Senate rules.

an individual retirement account (IRA) within 60 days of the deemed distribution to avoid being immediately taxed on the deemed distribution. The New Tax Law gives a participant more time to roll over an equal amount — until the date (including extensions) the participant has to file the income tax return for the year in which the deemed distribution occurred. The new rule applies to plan loan amounts that are treated as distributed from qualified retirement plans, 403(b) plans and governmental 457(b) plans by reason of the termination of the plan or the participant's failure to meet the repayment terms of the loan because of severance from employment. The new rule is effective for amounts that are treated as distributions in taxable years beginning after December 31, 2017.

Recharacterization of Roth Conversions

Prior to the New Tax Law, an individual who elected to convert a traditional IRA to a Roth IRA (to pay taxes immediately rather than upon distribution) had until the individual's tax filing deadline to undo the election. This allowed an individual to avoid paying tax on a high stock price if the price later dropped. The New Tax Law eliminates the last step: the ability to recharacterize a Roth IRA back to a traditional IRA after having previously converting it to a Roth IRA. Earlier versions of the New Tax Law would have prevented the initial conversion also, but the final New Tax Law dropped that portion of the provision. The provision is effective for taxable years beginning after December 31, 2017.

Tax Relief for 2016 Disaster Areas

The New Tax Law provides tax relief for certain retirement plan and IRA distributions taken on or after January 1, 2016 and before January 1, 2018 by an individual whose principal place of abode was located in a presidentially declared disaster area at any time in 2016[2] and who sustained economic loss. The provision is effective on the date of enactment. The relief is from the 10 percent premature distribution tax and, if a 401(k), 403(b) or 457(b) plan so provides, from in-service distribution restrictions. As long as the plan operates in accordance, no plan amendment is required until the last day of the first plan year beginning on or after January 1, 2018 (January 1, 2020 for governmental plans).

Proposed Retirement Plan Changes *Not* Included in the New Tax Law

Several retirement plan provisions were considered in the legislative process, but were not included in the New Tax Law. They include provisions that would have substantially accelerated the taxation of non-qualified deferred compensation; eliminated pre-tax 401(k) and other "catch-up" contributions while allowing increased catch-up contributions on a Roth after-tax basis; reduced the age for in-service distributions from certain plans to age 59½; modified rules for closed defined benefit plans; modified the rules for hardship distributions; subjected public pension plans to the unrelated business taxable income tax (UBIT) rules that currently apply to other not-for-profit entities; and limited special rules that allow participants in 403(b) and 457(b) plans to make additional contributions.

Health Provisions

Individual Mandate Penalty

The New Tax Law changes the amount of the Affordable Care Act's individual shared responsibility penalty for individuals who do not obtain health coverage to zero, effective in 2019. The elimination of the penalty is expected to save the government money because some low and moderate income workers would not buy health coverage; thus, they would not receive federal premium assistance tax credits. However, if fewer individuals obtain health insurance, uncompensated care costs could rise, leading indirectly to higher costs for employer plans as they subsidize these costs. In addition, the Congressional Budget Office (CBO) estimates that three million

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[2] The law only deals with distributions related to 2016 losses.

individuals could drop employer-sponsored health plans if they are not required to have coverage. The provision applies on or after December 31, 2018. Consequently, individuals who do not maintain coverage are subject to the individual shared responsibility penalty in 2018.

Proposed Health Changes *Not* Included in the New Tax Law

Although the individual shared responsibility penalty is effectively repealed, the New Tax Law does not repeal the employer shared responsibility penalty or any of the employer or health plan reporting obligations. Consequently, employers and health plans must continue to send Forms 1094-B and 1095-B to employees and participants, and to file copies with the Internal Revenue Service. The New Tax Law does not change the Affordable Care Act's excise tax on high-cost health plans (commonly referred to as the Cadillac tax). Previous proposals as part of health reform would have delayed the Cadillac tax until 2026. Consequently, the Cadillac tax will still take effect in 2020. Other Affordable Care Act taxes that would have been repealed or delayed as part of health reform are also not addressed in the New Tax Law. These include the health insurance tax, medical device tax, cap on employee contributions to health Flexible Spending Arrangements (FSAs), and requirement that over-the-counter drugs be paid only with a prescription. The New Tax Law also makes no changes to Health Savings Accounts or Archer Medical Savings Accounts (MSAs). We expect that some of these items, particularly the health insurance tax, may be addressed in spending legislation in 2018.

"The Cadillac tax will still take effect in 2020."

Cost-of-Living Indexing

Current law uses the Consumer Price Index for All Urban Consumers (CPI-U) as the measure for inflation adjustments of certain annual thresholds. The New Tax Law changes the measure of inflation adjustments to the Chained Consumer Price Index for All Urban Consumers (C-CPI-U). C-CPI-U is a different measure of inflation than the CPI-U, and it generally results in slightly smaller annual indexing increases each year. Among the items that would be subject to the Chained-CPI-U are income tax brackets, IRAs, Health Savings Accounts (HSAs), Archer Medical Savings Accounts (MSAs), health Flexible Spending Arrangements (FSAs), the Cadillac tax and the Affordable Care Act's premium assistance tax credits. (This change does not apply to cost-of-living increases based on IRC §415(d), which means that the CPI increase for most retirement plan limits are not reduced.)

New Employer Credit for Paid Family and Medical Leave

The New Tax Law creates a new employer tax credit for employers that pay employees who are on a leave under the Family and Medical Leave Act (FMLA), effective for wages paid in taxable years beginning in 2018 or 2019.

Eligible employers can claim a general business credit equal to 12.5 percent of the amount of wages paid to qualifying employees on FMLA leave. Employers must provide at least two weeks of leave and pay at least 50 percent of salary during the leave. The tax credit increases if employers pay a higher rate of wage replacement during the leave.

Employers must have a written policy to provide such leave. Any paid family leave required by state or local law, or provided as vacation, personal, or other medical or sick leave, would not qualify for the credit. For 2018, the credit can only be taken with respect to leave provided to employees who earn less than $72,000 annually (60 percent of the compensation threshold for highly compensated employees under IRC Section 414(g)).

How Segal Can Help

Segal works with trustees and their fund counsel on compliance and design issues.

Most of the provisions of the bill do not affect multiemployer plans as plans, but do affect multiemployer plans as employers. Segal can provide assistance to the plan and its counsel as to how these provisions affect the plan as an employer.

Questions?

For more information about how the New Tax Law may affect your plan, please contact your Segal consultant or the Segal office nearest you.

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