Affordable Care Act Update:  
What’s Happening With the Cadillac Plan Tax?

Congressional efforts to repeal and replace the Affordable Care Act are stalled. This means the ACA remains in place, at least for now. One of the issues employers are concerned about is the potential impact of the so-called Cadillac Plan tax, an annual tax on high-cost employer-sponsored health insurance. It’s scheduled to take effect Jan. 1, 2020. Although the tax is still years away and may be further delayed, modified, or repealed, employers should consider how their plans might be affected if the tax goes into effect.

Below are common questions and answers about the tax and its potential impact on businesses if the tax remains in place in its current form. Although proposed regulations are in the works, the IRS has only issued preliminary, non-binding guidance about the tax, so many aspects may evolve as additional guidance is issued.

This article is of interest to employers of all sizes.

Q: How is the tax calculated?

A: The tax is 40% of the cost of “applicable employer-sponsored coverage” that exceeds specified dollar thresholds. It is determined monthly, based on the coverage an individual has during that month. For fully insured plans, the cost is the premium paid for the plan. For self-funded plans, the actuarial value (e.g., the COBRA rate less the 2% administrative fee) will generally be used, subject to details to be specified when regulations are issued. The cost includes both amounts paid for by the employer and the employee for the coverage.

For 2018, the applicable dollar thresholds were set at $10,200 for individual coverage and $27,500 for family coverage. The dollar amounts are somewhat higher for qualified retirees not eligible for Medicare and individuals in certain high-risk professions. These dollar amounts will increase in future years by an inflation index. For 2020, the annual dollar thresholds are estimated by Congressional sources to be $10,800 for individual coverage and $29,100 for family coverage.\(^1\)
Q: What coverages are included in the calculation?

A: The tax applies to most employer group coverage, including:

» Health coverage, including medical, behavioral, and prescription drug.
» Health flexible spending accounts (FSAs).
» Employer contributions and employee pre-tax salary reduction contributions to health savings accounts (HSAs).
» Governmental group health plans for civilian employees.
» On-site medical clinics, with the likely exception of clinics that provide minimal medical care.
» Retiree medical coverage.
» Multi-employer plan coverage.
» Specified disease or illness and hospital indemnity or other fixed indemnity health insurance if the premium is paid pre-tax or by the employer.

Q: What types of coverages are excluded from the tax calculation?

A: The following insurance products are not factored into the tax:

» Accident insurance.
» Disability insurance.
» Life insurance.
» Supplemental liability insurance.
» Liability insurance, including general and automobile liability insurance.
» Workers’ compensation or similar insurance.
» Automobile medical payment insurance.
» Credit-only insurance.
» Stand-alone vision.
» Stand-alone dental.
» Specified disease or illness and hospital indemnity or other fixed indemnity sponsored by the employer if paid for on an after-tax basis.

Q: Are there any Aflac products that could be included in the calculation?

A: Voluntary insurance products are defined in the law as excepted benefits, which are excluded from the ACA market reforms. In the case of the Cadillac Tax, most Aflac products are excluded.

Two types of coverage — specified disease or illness, such as cancer coverage, and hospital indemnity or other fixed indemnity — are excluded if the products are paid for with after-tax dollars. These two products are, however, included in the tax calculation if paid for by the employer or by the employee with pre-tax dollars, such as through a cafeteria plan. Because the tax is determined
pro-rata based on the relevant cost of coverage, we anticipate that the potential impact for Aflac coverage will be very small, especially when factoring in the employment and income tax savings from offering Aflac coverage on a pre-tax basis. See the tables below.

**Q: Who is responsible for paying the tax?**

**A:** The details regarding reporting and payment of any tax are not yet clear, and will need to be clarified in IRS regulations. In general, the insurance provider or carrier is required to pay the tax. If there is more than one carrier, each carrier pays the percentage of the excise tax commensurate with their percentage of total premiums for coverage subject to the tax.

For self-insured coverage, the “person responsible for administering the plan” pays the tax. This could be the employer plan sponsor or possibly a third-party administrator. IRS regulations will need to provide clarity on this issue. Employers are responsible for calculating the tax and reporting to each person liable for the tax (e.g., each insurance carrier) and to the IRS the portion of the tax payable by each one.

**Q: Will my plan be affected?**

**A:** Because the tax is still a couple of years away, there is a real possibility that the scope, application, and time frame may change. For now, it’s estimated that approximately 16% of all plans could be affected by the excise tax when it takes effect in 2020, based on current plan designs.

The tax thresholds are linked to general inflation, and medical spending and premiums historically grow faster than general inflation, so eventually more plans will likely be affected. As the law stands, estimates indicate that as many as 70% of plans could be influenced by the tax within a decade based on current plan designs, depending on the industry.²,³

**Q: What can employers do now?**

**A:** Employers do not yet need to make changes to their coverage in anticipation of the tax. They can begin to assess their current health plans and talk to their legal and tax advisors about the potential impact of the tax, as well as talk to their benefits providers or brokers about solutions for managing health plan costs.
Example Cadillac Tax calculation in 2020 (using estimated thresholds)

Let’s look at a basic example to demonstrate how the Cadillac Tax is calculated and how voluntary excepted benefits products impact the calculation. This example is for illustration purposes only; the actual calculation in specific cases would vary.

In this example, we look at two employees, David and Emily. Both David and Emily are enrolled in group major medical coverage as individuals. Both also have employer-sponsored voluntary accident coverage and cancer coverage. They are enrolled in this coverage for the entire year. The only difference in coverage is that David pays for his cancer policy on a pre-tax basis through his employer’s cafeteria plan, whereas Emily pays for her cancer policy on an after-tax basis. The charts below summarize how the Cadillac Tax would apply, using an assumed individual threshold of $10,800, in accordance with current estimates of the limit in 2020.

<table>
<thead>
<tr>
<th>Coverage</th>
<th>Carrier</th>
<th>Included in tax calculation?</th>
<th>Annual premiums</th>
<th>Cadillac Tax applicable premiums</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>David</td>
<td>Emily</td>
</tr>
<tr>
<td>Major medical</td>
<td>Carrier X</td>
<td>Yes. Always included.</td>
<td>$10,900</td>
<td>$10,900</td>
</tr>
<tr>
<td>Voluntary accident policy</td>
<td>Aflac</td>
<td>No. Always excluded.</td>
<td>$ 500</td>
<td>$ 500</td>
</tr>
<tr>
<td>Voluntary cancer policy paid pre-tax through cafeteria plan</td>
<td>Aflac</td>
<td>Yes, because paid for on a pre-tax basis by the employee.</td>
<td>$ 700</td>
<td>$ 700</td>
</tr>
<tr>
<td>Voluntary cancer policy paid after-tax</td>
<td></td>
<td>No, because paid for on an after-tax basis by the employee.</td>
<td>$700</td>
<td>$0</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td></td>
<td>$12,100</td>
<td>$12,100</td>
</tr>
</tbody>
</table>

David: $11,600  
Emily: $10,900

**Excise tax:** For David, the tax is 40% of $800, or $320. For Emily, the tax is 40% of $100, or $40.
For David, each carrier’s responsibility for the tax is as follows:

<table>
<thead>
<tr>
<th>Carrier</th>
<th>Percent of applicable premiums</th>
<th>Calculation</th>
<th>Excise tax due</th>
</tr>
</thead>
<tbody>
<tr>
<td>Carrier X</td>
<td>$10,900/$11,600 = 94%</td>
<td>$320 x 94%</td>
<td>$300.80</td>
</tr>
<tr>
<td>Aflac</td>
<td>$700/$11,600 = 6%</td>
<td>$320 x 6%</td>
<td>$19.20</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td></td>
<td>$320</td>
</tr>
</tbody>
</table>

In David’s situation, any tax attributable to the Aflac coverage is minimal and would likely be more than offset by income and FICA tax savings.

For Emily, each carrier’s responsibility for the tax is as follows:

<table>
<thead>
<tr>
<th>Carrier</th>
<th>Percent of applicable premiums</th>
<th>Calculation</th>
<th>Excise tax due</th>
</tr>
</thead>
<tbody>
<tr>
<td>Carrier X</td>
<td>$10,900/$10,900 = 100%</td>
<td>$40 x 100%</td>
<td>$40</td>
</tr>
<tr>
<td>Aflac</td>
<td>$0/$10,900 = 0%</td>
<td>$100 x 0%</td>
<td>$0</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td></td>
<td>$40</td>
</tr>
</tbody>
</table>

In Emily’s situation, the cancer policy does not impact the Cadillac Tax calculation, because it is paid for on an after-tax basis.

**Conclusion**

Employers do not need to make any changes to address the Cadillac Tax until 2020 or possibly later. However, with legislation relating to the ACA still in flux, it makes sense for employers to consider how the Cadillac Tax might impact their health plans if it remains in place, and consult with their tax and benefits advisers. Because excepted benefits products are treated differently under the Cadillac Tax than major medical coverage, employers have a variety of options available with respect to such products when considering Cadillac Tax implications.

Also see the infographic version of this information.


This material is intended to provide general information about an evolving topic and does not constitute legal, tax, or accounting advice regarding any specific situation. Aflac and Alston & Bird cannot anticipate all the facts that a particular employer or individual will have to consider in their benefits decision-making process. We strongly encourage readers to discuss their health care reform situations with their advisors to determine the actions they need to take.

Aflac herein means American Family Life Assurance Company of Columbus and American Family Life Assurance Company of New York.