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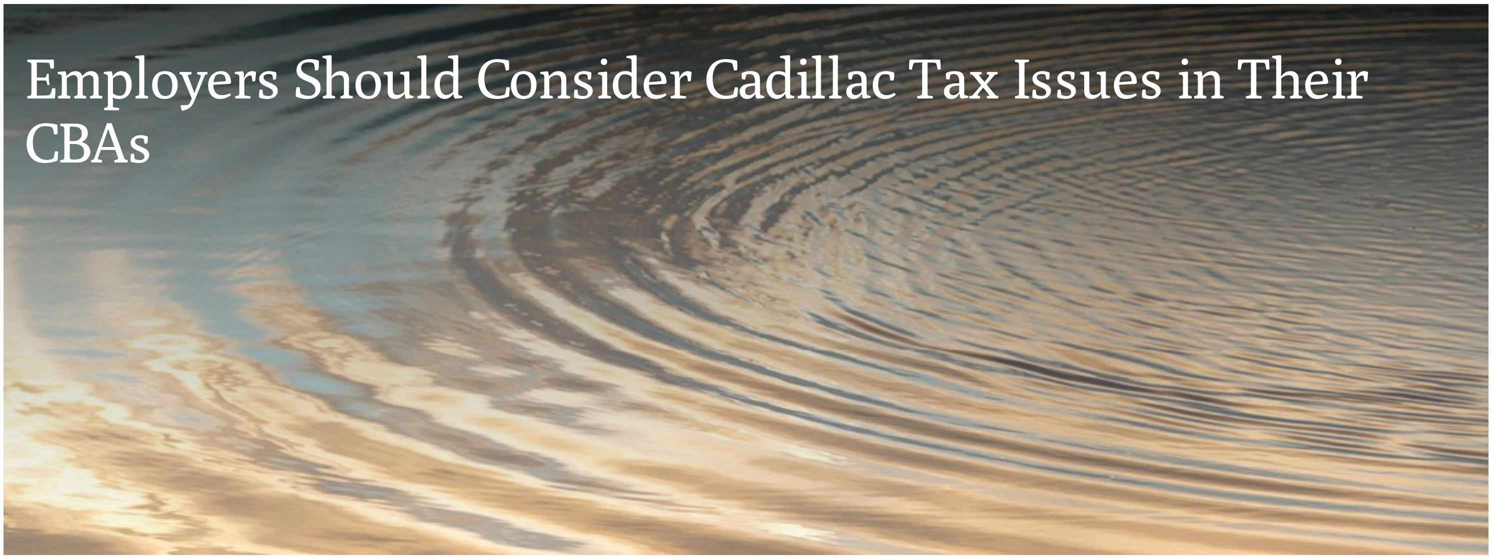

Employers Should Consider Cadillac Tax Issues in Their CBAs

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Employers that are in the process of negotiating collective bargaining agreements (CBAs) or that expect to be taking part in CBA negotiations before 2018 should be thinking about how to keep their CBAs from triggering the so-called “Cadillac Tax” under the Patient Protection and Affordable Care Act. The Cadillac Tax is a 40% excise tax on the cost of employer-sponsored health coverage that exceeds $10,200 for self-only coverage, or $27,500 for other coverage, starting in 2018. Generally, both pre-tax and after-tax employee and employer contributions count in calculating this cost.

Because we are still waiting for guidance explaining how the Cadillac Tax will be applied, employers should strive to preserve as much flexibility as possible in their CBAs. To this end, employers are using a variety of strategies in CBAs to attempt to deal with the tax prospectively, including:

- Reducing plan benefits and increasing deductibles;
- Including language to allow the employer to unilaterally reduce benefits to avoid the imposition of the Cadillac Tax in the event the cost of benefits under the CBA triggers the tax;
- Including language to allow the employer to reopen negotiations in 2017, after concrete guidance has been issued; and
- Avoiding specific dollar thresholds applicable in 2018 and beyond unless they have the ability to re-visit those amounts.

This issue is especially tricky in the collective bargaining context because CBAs that are being negotiated now may remain in effect into 2018 and beyond. Further, many unions have traditionally enjoyed rich health benefits, placing union plans particularly at risk for triggering the Cadillac Tax. At the same time, unions are not responsible for the tax – the tax falls on the employers (paid via the insurer for insured plans or by the administrator for self-insured plans).

This month, the IRS issued initial guidance on potential approaches to the Cadillac Tax in Notice 2015-16. The Notice discusses various methods for calculating the cost of benefits, which types of benefits will be included in the calculation, and how the various dollar limits will apply. The IRS is requesting comments by May 15 on any issues related to the Cadillac Tax.

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