Tax Reform and Employer-Sponsored Benefits

On December 20, 2017, Congress passed the Tax Cuts and Jobs Act fulfilling one of President Trump's major campaign promises. The President is expected to sign the bill later this month. The following briefly summarizes changes the bill makes to employer sponsored health and fringe benefit plans and notes provisions that remained the same in the final reconciled bill that passed both the House and Senate.

Affordable Care Act ("ACA") Individual Mandate Penalty Eliminated. Effective 2019, individuals will no longer be subject to a tax penalty for failure to secure Minimum Essential Coverage ("MEC"). The bill sets the penalty for failure to have health coverage to zero beginning in 2019.

ACA Employer Mandate Remains. The bill did NOT repeal the ACA employer mandate and therefore, Applicable Large Employers ("ALEs") must continue to offer health coverage or be subject to a penalty if any employee secures subsidized health coverage from an ACA marketplace. ALEs must continue to prepare and file ACA forms 1094-C and 1095-C. Although the ACA reporting requirements were not addressed in this tax bill, we assume that beginning with tax year 2019, (a) employers with self-funded plans may not be obligated to report healthcare coverage status for employees and dependents either on form 1095-B or Part III of Form 1095-C, and (b) employees covered by an insured arrangement will no longer receive Form 1095-B from the insurance carrier.

Tax Credit for Paid Leave. For 2018 and 2019, employers will be eligible for a tax credit of 12.5% to 25% of wages paid to employees using FMLA if the rate of pay is at least 50% of wages normally paid to employees and the leave is expected to be at least two weeks. The credit is available for employees with earnings below $72,000. We will need more guidance on this provision and await the issuance of regulations.

Transportation Benefits. Benefits for qualified parking and mass transit ($260 per month for 2018) will continue to be tax exempt for employees who can pay for these benefits with pretax income under an employer's salary-reduction plan however; employers will no longer be able to claim a tax deduction for these benefits. The employee tax exclusion for bicycle commuting ($20 per month) has been eliminated for 2018 through 2025.

Dependent Care Remains. The final bill continues to allow employers the ability to offer tax-favored dependent care flexible spending accounts with benefits up to the annual limit of $5,000.

Adoption Assistance Remains. The final bill continues to allow employers the ability to offer tax-favored adoption assistance programs with benefits for 2018 of $13,840.

Tuition Assistance Remains. Employers may continue to provide tax free education assistance up to $5,250 per year to employees for undergraduate, graduate or certificate level education expenses.

Inflation-Adjusted Limits. Several inflation-adjusted benefit limits are expected to increase at a *slower rate* under Tax Reform using a different measure of the Consumer Price Index ("CPI") called Chained CPI. For example, this will impact the limit adjustments for Health Savings Accounts and Health Flexible Spending Accounts. This change will also impact the calculation of the inflation-adjusted threshold amounts under the Cadillac Tax (scheduled to become effective in 2020) which may cause more employer plans to fall subject to the ACA Cadillac Tax. The use of CPI as the Cadillac Tax inflation adjustment parameter has been criticized as this index is considerably lower than historic and anticipated medical trend.

ADDITIONAL INFORMATION

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