Summary of Tax Cuts and Jobs Act Employee Benefit Provisions

Issue Date: December 2017

Background

We are very close to final passage of the Tax Cuts and Jobs Act. As far as employer-provided benefits are concerned, the final version of the Act contains fewer changes than many expected. There will be a number of checklists and detailed summaries in the coming weeks as all details are analyzed. This Update provides some general information on benefits provisions in the final bill and what to expect in 2018.

Changes to Benefits Legislation

Individual Mandate

The Affordable Care Act requires that most individuals obtain qualifying health coverage or pay a penalty when they file their tax return. The biggest healthcare news around the Tax Cuts and Jobs Act concerns the "zeroing out" of the Individual Mandate penalties, beginning in 2019.

Employer Deduction for Transportation Benefits

The employer deduction, which allows employers to deduct the cost of certain employer-provided transportation benefits (for example, transit passes or parking) is repealed, effective 2018.

Qualified Bicycle Reimbursements Exclusion

Under current tax law, reimbursements for bicycle commuting expenses (up to $20 per month) are excluded from an employee's pay. This exclusion is repealed beginning in 2018.

Methodology for Determining Health FSA and Health Spending Account Limits

Current law caps contributions to a Health FSA at $2,650 for 2018 and caps contributions to a family HSA at $6,900 for 2018. Both of those numbers are adjusted up from 2017. Under the final legislation, the methodology for determining adjustments to these limits uses a so-called "chained CPI," which is likely to result in a slower upward adjustment for these caps in the future.

Employer Credit for paid FMLA Leave

Effective for 2018 and 2019, Employers will be eligible for a tax credit (that's a dollar-for-dollar reduction in tax liability) when they provide certain paid FMLA leave to employees. There are plenty of details here, but the maximum credit will be set at 25% of wages paid. The credit is scheduled to sunset at the end of 2019.

What Hasn't Changed

Employer Mandate & Employer Reporting

There is currently no change scheduled for the Employer Mandate or Employer Reporting. We remain hopeful for relief in the future, but it's important to stay focused on these rules for the time being.

Cadillac Tax

The tax on high-cost health plans has not been eliminated. It's still scheduled to go into effect in 2020.

Adoption Assistance

Employees will continue to be allowed to exclude reimbursements from employer-sponsored adoption assistance programs.

Dependent Care Assistance

The exclusion for employer-provided dependent care assistance up to $5,000 per year remains in place. This is the exclusion that supports dependent care assistance accounts in cafeteria plans.

Employer-Provided Child Care

Employers may currently claim a tax credit for certain qualified employer-provided child care. This credit is left unchanged by the final bill.

Tax Rate Changes

Corporate tax rates will go down and the final bill creates a brand new deduction for certain pass through entities such as LLCs or partnerships. This may create a tidal wave of new tax planning. It will be important as things unfold to consider the impact of new corporate forms on employee benefit plans.

Summary

Many experts are predicting the need for a "technical corrections" bill sometime in 2018. That, combined with the changes described above and uncertainty in the individual health insurance market, means that employers will need to stay focused on employee benefit issues for the foreseeable future.