Preserve Tax Treatment for Employer-Sponsored Health Plans

THE COUNCIL

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BACKGROUND

Employer-sponsored health coverage is the most common type of health insurance in the U.S. About 179 million nonelderly Americans receive their health benefits through an employer. Members of The Council of Insurance Agents & Brokers sell (or serve as a consultant for) the majority of these plans. As policymakers debate the many implementation issues surrounding the Affordable Care Act, it is important that the cornerstone of affordable coverage for a majority of Americans is preserved. The primary drivers to the employer-provided group insurance coverage are the pre-tax treatment of both employer- and employee-paid premiums.

AT ISSUE

Cadillac Tax: The Affordable Care Act prescribed a 40% excise tax on generous employer health plans in 2018, with the intent to discourage consumer abuse of health services and increase financial stakes for consumers. Specifically, the law says that if the aggregate cost of employer-sponsored health insurance coverage for an employee exceeds $10,200 for individual coverage and $27,500 for family coverage, a non-deductible 40% excise tax is applied to the amount of the employee benefit that exceeds the tax threshold. ACA authors predicted that doing so would decrease costs and increase taxable wages as employers shift funds from health plans to salaries.

The potential impact of this tax is driving employers to fundamentally reassess their health care plans and reconsider what their role and approach to providing health care benefits should be in the future. At the moment, the tax is acting as a catalyst for change. However, continued medical inflation and regional differences in health care costs make it difficult for employers to continue reducing benefit costs to avoid the tax, and the relentless increase in health care costs will eventually cause smaller benefit plans to be subject to the Cadillac plan tax. Ultimately, the burden of the tax will fall on a significant number of American employees and their families.

Preserving Tax Exempt Status: As Congress considers major tax reform legislation, the tax exclusion for employer sponsored benefits is under scrutiny and considered a revenue raiser for the federal government. Historically, employer provided benefits have been treated as the primary delivery method for health insurance for millions of American across the country. And when Congress passed the Affordable Care Act in 2010, it built on the employer provided system with a plethora of mandates and coverage requirements to ensure that employers do right by their employees by providing secure insurance coverage. Following the implementation of the ACA, the tax exemption that employers receive for employee benefit plans is the strongest financial incentive they have to stay in the employee benefits market.

OUR POSITION

The Council supports repealing the Cadillac Tax. The Council believes that taxing benefits is a dangerous policy experiment that could significantly erode employer-sponsored health insurance coverage. The tax exclusion for employer plans is the holy grail of employer-provided benefits, and the 40% excise tax, effective in 2018, is already forcing employers to reduce coverage options for most Americans. Studies show that any large employer subject to the tax will pay an average of $1 million that year, an average of $2.1 million per year from 2018 to 2024, which is more than $2,700 per employee. The Council believes that employers will avoid the tax and continue reducing coverage options over time. In the face of rising health costs, the long-term result could risk pushing employers out of the market altogether.

The Council considers any alterations to the tax treatment of employer benefits to be potentially catastrophic. As employers bend over backwards to comply with the new and confusing ACA regulations, a new tax on these plans could be what breaks the camel's back, encouraging employers to altogether exit the benefits market and send millions of employees to access federal subsidies guaranteed by the ACA. Employer contributions to benefit plans would be at risk, and the federal government could be on the financial hook for an untold amount of unanticipated entitlement spending. We consider any such move extremely dangerous and potentially catastrophic for both the future of employer benefits and the future of the ACA.

Support Strong Wellness Programs that Promote Healthy Behavior and Decrease Costs

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BACKGROUND

Corporate wellness programs are intended to promote employee health and reduce overall health costs. To encourage employee participation, the ACA and the Department of Labor's corresponding regulations allow wellness programs to offer rewards in the form of discounts on the cost of health care coverage. These programs are subject to a number of requirements under various federal laws, including the Affordable Care Act (ACA), the Health Insurance Portability and Accountability Act (HIPPA), and the Americans with Disabilities Act (ADA).

Large companies have responded positively to the wellness provisions in the ACA, structuring programs that include biometric testing that can catch preventable illnesses in early stages, and adjusting premiums according to an employee's participation. There is now, however, regulatory ambiguity as the Equal Employment Opportunity Commission (EEOC) sued Honeywell International, Inc. in 2014, claiming the proposed medical testing associated with Honeywell's employer wellness program "is not voluntary, and therefore violates the Americans with Disabilities Act." Under Honeywell's program, workers and their spouses are asked to undergo a biometric screening that includes drawing blood to test cholesterol levels and a determination of body mass index by measurement of height, weight, and circumference. Non-participants are assessed a surcharge on their medical plan costs. The EEOC argued that the program violated the ADA and the Genetic Information Nondiscrimination Act (GINA), while being fully compliant with the Department of Labor's regulations.

AT ISSUE

The EEOC's interpretation of the ADA is unclear. Since 2009, the EEOC has stated that it is continuing to examine what level, if any, of financial inducement to participate in a wellness program would be permissible under the ADA. However, they have yet to articulate a clear standard. The ACA and DOL regulations have incentivized employers to reward participation in wellness programs.

EEOC's actions against Honeywell generated serious concerns for employers considering adopting and administering wellness programs, which are a key cost-containment tool in the ACA. Employers are now concerned that even if they design a wellness program in accordance with the Department of Labor's rules, such a program may still run afoul of the EEOC's interpretation of the ADA.

OUR POSITION

The EEOC's recent action has left the business community confused and with no guidance on how to implement wellness programs while fully complying with both the ACA and the ADA. The Council supports regulatory or legislative clarity that allows companies to move forward with strong wellness programs that incentivize and reward employer participation.

Clarify that Non-Financial Insurance Premiums are Exempt from the Foreign Account Tax Compliance Act (FATCA)

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BACKGROUND

The Foreign Account Tax Compliance Act (FATCA) went into effect on July 1, 2015, with the intent to target and ultimately close illegal offshore tax shelters. The law requires that any U.S. entity conducting business with a Foreign Financial Institution (FFI) to demonstrate that the institution is not holding untaxed U.S. dollars by collecting W8-BEN-E certification forms. If the certification cannot be acquired, then the U.S. company conducting the transaction will be required to withhold 30% of the payment. The law currently applies to non-cash value property/casualty insurance premiums sent overseas.

AT ISSUE

Non-cash value insurance premium payments to overseas insurers are naturally non-financial transactions, and cannot be used as a vehicle to avoid taxes. FATCA's goal is close international accounts with cash value that are being exploited to avoid U.S. taxes, but it is misguided to equally target international property/casualty insurance premium payments. There is due precedence demonstrating regulatory recognition of the non-financial nature of property/casualty insurance premiums. The post-9/11 Patriot Act regulations excluded non-cash value insurance from its anti-money laundering requirements because regulating them would not further its purposes, and other countries around the globe have similar tax evasion laws that exclude non-financial property casualty premiums from their reach.

OUR POSITION

Non-financial/non-cash value insurance premiums should be exempt from FATCA requirements. U.S. interests are not served by including all property/casualty insurance and other non-cash value insurance and reinsurance premiums within FATCA. The regulatory compliance cost facing the global insurance marketplace is significant, with no apparent benefit to the U.S. government. Neither individuals nor corporations can use insurance premiums or other non-cash value products to evade U.S. taxes, which is the abuse targeted by FATCA.

The Council expects legislation to be introduced in Congress this year that would establish that non-cash-value property/casualty international transactions should not be subject to the FATCA regime. We urge co-sponsorship of this legislation, and its inclusion in any significant tax package that moves this year.

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CYBER INSURANCE

Cybersecurity is emerging as a major concern for commercial insurance brokerage firms. Cyberattacks aimed at U.S. businesses and government entities are being launched from various sources, including sophisticated hackers, organized crime, and state-sponsored groups. These attacks are advancing in scope and complexity. The second-largest health insurer in the nation discovered last week it had been hacked in an effort to steal the personal information of tens of millions of Americans. The Anthem data breach is likely to be the largest disclosed by a health care company. There is no argument that something has to change if the landscape of data and asset security is to get better.

Council members are uniquely positioned to educate and coordinate risk management, compliance and insurance in order to increase the security maturity and cyber resilience of their clients, many of whom are major stakeholders of the country's critical infrastructure. In the wake of last year's rash of high-profile attacks, a healthy cyber insurance market is beginning to emerge. Cyber insurance is important because it creates incentives that drive behavioral change. The simple act of applying for insurance forces insureds to assess their intangible asset risks and the strength of their cyber defenses. This process is a critical risk mitigation tool being led by brokerage firms across the country. In the face of increasing buyer demand, the insurance industry is focused on addressing a shortage of capacity and quickly innovating to develop creative solutions.

Our Position: The Council supports legislation that promotes cyber risk information sharing between the government and private sectors. It also needs to afford businesses legal certainty that they have safe harbor against frivolous lawsuits when voluntarily sharing and receiving threat indicators and countermeasures in real time. The Council also supports legislation that would replace the patchwork of state data breach notification laws and create a single national standard for reporting data breaches. However, such legislation must not set too prescriptive a deadline on that reporting. Businesses must have sufficient time to identify the breach, make sure the hackers are out of their system, and assess the extent of the damage, before making this information public. The time needed to do this will vary greatly from breach to breach and any uniform notification law must allow sufficient flexibility for these variances.

MODERNIZING RISK RETENTION GROUPS

Risk Retention Groups (RRGs) are currently limited to offering only commercial liability coverage to its members, lacking legal authority to "package" liability coverage with property coverage for clients. Education and non-profit communities across the country have long-sought the ability to purchase liability and property coverage in a packaged policy, much like profitable entities do outside of RRGs. Property/casualty coverage is typically written as a "package" with "package credits." Many commercial insurers will not write the property policy unless they can also write the liability. This limits the options available to RRG members which must purchase a "standalone" property policy, and is becoming an increasingly expensive problem for non-profit communities.

Allowing non-profit groups, like the Ronald McDonald House and Boys & Girls Clubs, to purchase packaged policies through their RRG significantly reduces their property coverage costs and allows more of their donations to be redirected to furthering their mission.

Our Position: The Council supports legislation to modernize Risk Retention Groups and allow exclusively the non-profit and education communities access to packaged liability and property/casualty policies.