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Year-end Spending and Tax Deal Affects Health, Retirement and Fringe Benefit Plans

On December 18, 2015, the President signed H.R. 2029, a massive year-end spending and tax bill containing a number of provisions affecting health and retirement plans. The legislation is the result of months of contentious negotiations that began in earnest after Congress reached a budget deal in October. H.R. 2029 includes both an omnibus appropriations bill that funds the government through September 30, 2016 – the Consolidated Appropriations Act, 2016 ("CAA") – and an extension (in some cases, a permanent one) of a large number of expiring or expired tax incentives – the Protecting Americans from Tax Hikes Act of 2015 ("PATH Act").

Notably, neither the CAA nor the PATH Act contains a policy rider preventing DOL from moving forward with its proposed fiduciary rule. The rule has been the subject of intense Congressional scrutiny, and Republican-sponsored appropriation bills in both the House and the Senate contained provisions would have delayed the rulemaking for a year. However, Democrats and the White House objected strenuously to the rider, and it eventually fell out of the final package.

The key provisions of H.R. 2029 affecting health, retirement and fringe benefit plans are highlighted below.

Health and Fringe Benefit Changes

- High Cost Employer-sponsored Health Coverage Excise Tax. The CAA includes a two-year delay of the high cost employer-sponsored health coverage excise tax (commonly dubbed the "Cadillac tax"). The tax will now not be effective until 2020. The CAA also makes the excise tax deductible for employers, and commissions a study by the General Accounting Office on the appropriate benchmark for adjustments in the excise tax threshold based on the employer's age and gender characteristics as compared to the national workforce.

- Health Insurer Fee Moratorium. The CAA imposes a one-year moratorium, for 2017, on the annual fee on health insurance providers (ACA sec. 9010).

- Medical Device Tax Moratorium. The PATH Act provides for a two-year moratorium (sales in 2016-17) on the 2.3-percent excise tax imposed on the sale of medical devices.

- Mass Transit and Parking Benefits. The PATH Act permanently extends the maximum monthly exclusion amount for transit passes and van pool benefits so that these transportation benefits match the exclusion for qualified parking benefits ($250 per month for 2015 and $255 per month for 2016). The benefits are excluded from an employee's wages for payroll tax purposes and from gross income for income tax purposes.

- Governmental Accident or Health Benefits. The PATH Act extends the special rule under Internal Revenue Code ("Code") section 105(j) for certain death benefits paid by accident or health plans of a public retirement system to such benefits paid by plans established by or on behalf of a State or political subdivision. To qualify, a plan must have (i) been authorized by a State legislature or received a favorable ruling from the IRS that the trust's income is not includible in gross income under either section 115 or section 501(c)(9) of the Code and (ii) on or before January 1, 2008, provided for payment of medical benefits to a deceased participant's beneficiary.

Retirement Plan Changes

- Charitable Distributions from IRAs. The PATH Act permanently extends the ability of individuals at least 70½ years of age to exclude from gross income qualified charitable distributions from IRAs, effective for 2015 and later years. The exclusion may not exceed $100,000 per taxpayer in any tax year.

- Rollovers to SIMPLE IRAs. The PATH Act allows participants to roll over their accounts from an employer-sponsored retirement plan to a SIMPLE IRA, provided the participant's SIMPLE IRA is at least two years old.

- Church Plans. The PATH Act includes a long-pending package of helpful church plan changes. Among other things, they provide that IRS cannot aggregate certain church plans together for purposes of the non-discrimination rules, and it provides flexibility for church plans to decide which other church plans with which they associate. It also prevents certain grandfathered church defined benefit plans from having to meet certain requirements relating to maximum benefit accruals, and it allows defined contribution church plans to offer automatic enrollment. Finally, the legislation streamlines the rules for merging and reorganizing church plans, and allows them to invest in 81-100 collective trusts.

- Foreign Investment in Real Property Tax Act ("FIRPTA"). The PATH Act adds an exemption to withholding under FIRPTA for the disposition of U.S. real property held directly (or indirectly through one or more partnerships) by certain foreign pension funds and made after enactment. The new exemption should make U.S. real estate investments more attractive to non-U.S. pension plans.

- Airline Employee IRA Rollovers. The PATH Act corrects an effective date problem affecting rollovers to IRAs of amounts received by qualified airline employees as a result of certain airline bankruptcies. Such distributions generally may be rolled over within 180 days of receipt or, if later, within 180 days of the enactment of the changes, *i.e.*, December 18, 2014.

- Public Safety Officers. The PATH act extends the current relief from the 10% penalty on early withdrawals from retirement plans and accounts for qualified public safety employees to include nuclear materials couriers, U.S. Capitol Police, Supreme Court Police, and diplomatic security special agents of the State Department for withdrawals made after 2015.

Tax Reporting Changes

- Errors on Information Returns. Effective for forms filed after 2016, the PATH Act creates a safe harbor from penalties for the failure to file correct information returns and for failure to furnish correct payee statements. If an error involves $100 or less ($25 or less in the case of errors involving tax withholding), the issuer of the information return is not required to file a corrected return and no penalty is imposed. A recipient of an incorrect return can elect to have a corrected return issued to them and filed with the IRS.

- Wage Reporting. Effective for forms first filed in 2017, the PATH Act requires forms W-2, W-3, and 1099-MISC to be filed on or before January 31 of the year following the calendar year to which such returns relate. It also provides additional time for the IRS to review refund claims based on the earned income tax credit and the refundable portion of the child tax credit.

2016 Legislative Outlook. Almost immediately after passing H.R. 2029, Congress adjourned for the holidays. Members will return on January 6, 2016, to start the Second Session of the 114th Congress. However, the passage of H.R. 2029 was intended largely to clear the deck for Congress as they head into an election year. With spending levels set and no threat of expiring tax provisions, Congress will have very little pressure to pass major legislation in 2016.